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UNITED STATES OF AMERICA

# Federal Power Commission Reports

## Opinions, Decisions, and Orders

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## CONTENTS

Page

Members of the Commission........ II

Table of Commission Opinions, Initial Decisions Which Have Become Final, and General Rule Making Orders........ IV

Table of Cases Reported........ VII

Table of Cases Cited........ XXIII

Table of Statutes Cited........ XXIX

Table of Rules of Commission Cited........ XXXIII

Table of Miscellaneous Citations........ XXXV

Foreword........ XXXVII

Opinions, Decisions, and Orders........ 1

List of Producer Orders........ 1211

Index-Digest........ 1249

Subject Index........ 1269

---

*This volume should be cited "37 FPC—"*

## COMMISSION OPINIONS

| Opinion No. |  | Page |
|---|---|---|
| 510-A | Panhandle Eastern Pipe Line Co., docket No. CP66-50 | 314 |
| 511 | Dairyland Power Cooperative, et al., docket No. E-7113 | 12 |
| 512 | Columbia Gulf Transmission Co., et al., docket No. CP65-102, et al | 118 |
| 513 | Hamilton, Ohio, City of, et al., docket No. CP65-402, et al | 209 |
| 514 | Rocky Mountain Power Co., project No. 2289 | 329 |
| 515 | Virginia Electric & Power Co., docket No. E-6684 | 340 |
| 515-A | Virginia Electric & Power Co., docket No. E-6684 | 767 |
| 516 | Florida Gas Transmission Co., docket No. CP65-393 | 424 |
| 517 | Florida Power & Light Co., docket No. E-7210 | 544 |
| 518 | Georgia Power Co., project No. 2354 | 620 |
| 519 | Northern Natural Gas Co., et al., docket No. CP65-1, et al | 649 |
| 519-A | Northern Natural Gas Co., et al., docket No. CP65-1, et al | 1005 |
| 520 | Humble Gas Transmission Co., et al., docket No. CP65-395, et al | 920 |
| 521 | Great Lakes Transmission Co., et al., docket No. CP66-110, et al | 1070 |
| 522 | Algonquin Gas Transmission Co., et al., docket No. CP65-340, et al | 1128 |

## INITIAL DECISION WHICH HAS BECOME FINAL

Apache Corp., et al., docket No. CI61-336, et al 963

## GENERAL RULE MAKING ORDERS

| Order No. |  | Page |
|---|---|---|
| 334 | Docket No. R-199, Prescribing Certain Make-up Provisions in Contracts Between Producers and Pipeline Companies | 110 |
| 334-A | Docket No. R-199, Prescribing Certain Make-up Provisions in Contracts Between Producers and Pipeline Companies | 587 |
| 335 | Docket No. R-315, Public Utilities and Licenses—Transmission Line Statistics | 293 |
| 336 | Docket No. R-316, Refund Conditions in Temporary Certificates Issued to Independent Producers | 295 |
| 337 | Docket No. R-308, Gas Supply of Natural Gas Companies | 326 |
| 338 | Docket No. R-310, Annual Reports, Municipal Electric Utilities | 511 |
| 339 | Docket No. R-318, Official Notice of Facts, Amending Rules of Practice and Procedure | 700 |
| 340 | Docket No. R-319, Independent Producers—Transfer of Acreage | 731 |

Order No. Page
341 Docket No. R-304, Recreational Facilities at Licensed Projects—Prohibition of Discrimination 775
342 Docket No. R-320, Amending Regulations under the Power Act with Respect to Number of Copies Required to be Filed 784
343 Docket No. R-305, Amending Uniform System of Accounts—Expenditures Relating to Fish, Recreation and Wildlife 813
344 Docket No. R-321, Reports of Natural Gas Companies—Curtailments of Service to Industrial Customers 838
344-A Docket No. R-321, Reports of Natural Gas Companies—Curtailments of Service to Industrial Customers 1036
345 Docket No. R-322, Natural Gas Companies—Reports of System Flow Diagrams 867
346 Docket No. R-323, Amending Regulations re Applications Under Section 24 of the Federal Power Act 893
347 Docket No. R-324, Rate Schedules of Public Utilities—Statement of Policy 898
348 Docket No. R-325, Statement of General Policy Providing Citations to L-Forms 1037
349 Docket No. R-326, Amending Statement of Organization—Public Information 1101
350 Docket No. R-306, Applications for Minor License—Exhibit Relative to Fish and Wildlife 1125
352 Docket No. R-329, Eleventh Amendment to Statement of General Policy No. 61-1—Anti-Triggering Conditions in Producer Certificates 1204

# TABLE OF CASES REPORTED

| | Page |
|---|---|
| Alabama Power Co., project No. 2146 | 396 |
| Alabama-Tennessee Natural Gas Co., docket No. G-585, et al | 539 |
| Alabama-Tennessee Natural Gas Co., docket No. CP67-218 | 1189 |
| Albany, Water, Gas and Light Commission, City of, et al., docket No. CP67-264 | 883 |
| Algonquin Gas Transmission Co., docket No. CP64-29, et al | 270 |
| *Algonquin Gas Transmission Co., et al., docket No. CP65-340, et al | 976, 1128 |
| Algonquin Gas Transmission Co., docket No. CP67-128 | 11 |
| Algonquin Gas Transmission Co., docket No. CP67-268 | 995 |
| Algonquin Gas Transmission Co., docket No. CP67-317 | 1096 |
| Amerada Petroleum Corp., et al., docket No. RI60-18, et al | 66, 116, 324 |
| Amerada Petroleum Corp., et al., docket No. RI60-45, et al | 109 |
| Andersonville, Georgia, City of, et al., docket No. CP67-156 (Phase I) | 757 |
| *An-Son Corp., et al., docket No. CI63-370, et al | 963 |
| *Apache Corp., et al., docket No. CI61-336, et al | 963 |
| Area Rate Proceeding, et al. (Permian Basin Area), docket No. AR61-1, et al | 52, 1024 |
| Area Rate Proceeding, et al. (Southern Louisiana Area), docket No. AR61-2, et al | 66, 116, 324 |
| Area Rate Proceeding, et al. (Hugoton-Anadarko Area), docket No. AR64-1, et al | 397 |
| Area Rate Proceeding, et al. (Texas Gulf Coast Area), docket No. AR64-2 | 1025 |
| Area Rate Proceeding, et al. (Texas Gulf Coast Area), docket No. AR64-2, et al | 397 |
| Area Rate Proceeding, et al. (Other Southwest Area), docket No. AR67-1, et al | 400, 807, 829 |
| Arkansas Louisiana Gas Co., et al., docket No. CP61-163, et al | 738 |
| Arkansas Louisiana Gas Co., docket No. CP67-186 | 318 |
| Arkansas Louisiana Gas Co., docket No. CP67-197 | 718 |

---

*Designates case as an opinion or decision.

Page

Arkansas Oklahoma Gas Corp. (formerly Fort Smith Gas Corp.), docket No. G-2191, et al. 979
*Atlantic Seaboard Corp., et al., docket No. CP65-122, et al. 118, 310, 591
Atlantic Seaboard Corp., et al., docket No. RP65-49, et al. 244, 507
Baca Gas Gathering System, Inc., docket No. CP67-159 498
Bangor Hydro-Electric Co., docket No. E-7316 1117
Belhaven, North Carolina, Town of, et al., docket No. E-7308 850
Blacksville Oil and Gas Co., et al., docket No. CP67-144, et al 502
Blanco Oil Co., et al., docket No. G-20402, et al 1042
Blue Dolphin Pipe Line Co., docket No. CP67-246 997
Bradco Oil & Gas Co., et al., docket No. CI67-671, et al 946
Camino Corp., The (formerly Camino Oil Corp.), et al., docket No. CI67-613, et al 845
Capitan-Carrizozo Natural Gas Association, et al., docket No. CP67-213, et al 725
Cascade Natural Gas Corp., et al., docket No. CP67-154, et al 304
Central Hudson Gas & Electric Corp., docket No. E-7323 271
Central Illinois Electric and Gas Co., et al., docket No. E-7275 257
Central Illinois Light Co., et al., docket No. E-7250 296
Central Illinois Light Co., docket No. E-7332 287
Central Illinois Public Service Co., et al., docket No. E-7250 296
Chatanika Power Co., Inc., project No. 2264 253
Christie, Mitchell & Mitchell Co., et al., docket No. G-20001, et al 779
Chugach Electric Association, project No. 2170 759
Cities Service Gas Co., docket No. CP63-188 (Phase II) 1049
Cities Service Gas Co., et al., docket No. CP64-89 801
Cities Service Gas Co., docket No. CP66-188 763
Cities Service Gas Co., docket No. CP67-67 1044
Cities Service Gas Co., docket No. CP67-99 273
Cities Service Gas Co., docket No. CP67-104 70
Cities Service Gas Co., docket No. CP67-150 522
Cities Service Gas Co., et al., docket No. CP67-190 615
Cities Service Gas Co., docket No. CP67-203 541
Cities Service Gas Co., et al., docket No. CP67-275 1002
Clegg & Hunt (Operator), et al., docket No. RI60-405, et al 1027
Colorado Interstate Gas Co., et al., docket No. CP61-143, et al 738
Colorado Interstate Gas Co., et al., docket No. CP65-200, et al 589
Colorado Interstate Gas Co., docket No. CP65-341 81

Page
Colorado Interstate Gas Co., docket No. CP66-299 417
Colorado Interstate Gas Co., docket No. CP67-195 764
Colorado Interstate Gas Co., docket No. CP67-209 771
Colorado Interstate Gas Co., docket No. CP67-265 1191
Colorado Interstate Gas Co., docket No. CP67-290 1046
Colorado-Ute Electric Association, Inc., et al., docket No. E-7306 68, 495
*Columbia Gulf Transmission Co., et al., docket No. CP65-102, et al 118, 310, 591
Columbia Gulf Transmission Co., docket No. CP67-130 230
Columbia Gulf Transmission Co., docket No. CP67-243 843
Columbia Gulf Transmission Co., et al., docket No. CP67-278 1020
Columbia Gulf Transmission Co., et al., docket No. RP66-22, et al 244, 507
Commonwealth Edison Co., et al., docket No. E-7275 257
Community Public Service Co., docket No. E-7337 733
Consolidated Edison Co. of New York, Inc., project No. 2338 105, 106
Consolidated Gas Supply Corp., docket No. CP67-6 593
Consolidated Gas Supply Corp., docket No. CP67-212 855
Consolidated Gas Supply Corp., docket No. CP67-254 905
Consolidated Gas Supply Corp., docket No. CP67-328 1179
Consolidated Oil & Gas, Inc., docket No. RI65-290 809
Constantine, S. T. (Operator), et al., docket No. RI60-43, et al 1024
Consumers Power Co., docket No. E-7330 300
Consumers Power Co., docket No. E-7352 1118
Consumers Power Co., project No. 2436 302
Consumers Power Co., project No. 2453 72
Continental Oil Co., et al., docket No. CI66-890, et al 1199
Continental Oil Co., et al., docket No. CI66-1099, et al 303
Continental Oil Co., docket No. RI64-395 513
Cornell Oil Co., docket No. CS67-49 802
Creal Springs, Illinois, City of, et al., docket No. CP67-121 1
Crisp County Power Commission, et al., docket No. E-7120 1103
Crow, David (Trustee), et al., docket No. RI67-111, et al 78
Crow, David, et al., docket No. RI67-112, et al 78
D. E. & R. J. Whelan, Inc. (formerly D. E. & R. J. Whelan), docket No. RI62-39 534
*Dairyland Power Cooperative, et al., docket No. E-7113 12
Dalport Oil Corp. (Operator), et al., docket No. CS66-15, et al 584
Del Norte Natural Gas Co., et al., docket No. CP66-104, et al 723

Page

Delta Development Co., Inc., The, et al., docket No. CI67-1805, et al. 1195
Denman, William Harvey, Trustee, et al., docket No. RI67-113, et al. 707, 1107
Dennery, Moise W., et al., docket No. CI67-1806, et al. 1195
Despot, George, Agent (Operator), et al., docket No. CI65-974, et al. 303
Donnell Drilling Co., docket No. RI67-347 729
Duke Power Co., project No. 2465 857
Duke Power Co., project No. 2503 606
Duquesne Light Co., docket No. E-7331 1051
East Tennessee Natural Gas Co., docket No. CP67-135 259
East Tennessee Natural Gas Co., et al., docket No. CP67-181, et al. 831
East Tennessee Natural Gas Co., issued June 28, 1967 1181
Eastern Shore Natural Gas Co., docket No. CP67-282 998
El Paso Gas Transportation Corp., et al., docket No. CP66-105, et al. 723
El Paso Natural Gas Co., docket No. G-8934 739
El Paso Natural Gas Co., et al., docket No. G-12135, et al. 597
El Paso Natural Gas Co., et al., docket No. CP61-265, et al. 789
El Paso Natural Gas Co., docket No. CP62-154 832
El Paso Natural Gas Co., docket No. CP64-99 740
El Paso Natural Gas Co., et al., docket No. CP66-105, et al. 723
El Paso Natural Gas Co., docket No. CP67-54, et al. 231
El Paso Natural Gas Co., docket No. CP67-60 418
El Paso Natural Gas Co., docket No. CP67-102 2,919
El Paso Natural Gas Co., et al., docket No. CP67-122, et al. 725
El Paso Natural Gas Co., et al., docket No. CP67-141, et al. 304
El Paso Natural Gas Co., docket No. CP67-227 907
El Paso Natural Gas Co., docket No. RP67-9 709
Eugene, Oregon, by and through its Eugene Water & Electric Board, City of, project No. 2510 979
Everett, Washington, City of, et al., project No. 2157 957, 1205
Fasterling, Charles William, et al., docket No. CI67-1807, et al. 1195
Fasterling, Gertrude Jackman, et al., docket No. CI67-1808, et al. 1195
Fasterling, III, John Bernard, et al., docket No. CI67-1809, et al. 1195
*Florida Gas Transmission Co., docket No. CP65-393 424, 829, 993

Page
Florida Gas Transmission Co., docket No. CP67-182 ..... 499, 846
Florida Gas Transmission Co., docket No. CP67-321 ..... 1109
*Florida Power & Light Co., docket No. E-7210 ..... 544, 833
Fountaintown Gas Co., Inc., et al., docket No. CP67-196 ..... 501
Gas Marketing, Inc., docket No. CP63-60 ..... 748
General Crude Oil Co., et al., docket No. CI66-919, et al ..... 1199
George Mitchell & Associates, Inc., Agent for B. V. Christie, et al., docket No. RI64-251, et al ..... 779
Georgia Power Co., et al., docket No. E-7120 ..... 1103
*Georgia Power Co., project No. 2354 ..... 620, 986
Georgia Power Co., project No. 2591 ..... 1056
Glamorgan Pipe & Foundry Co., project No. 2358 ..... 339
Gould, George D., Trustee, docket No. CS67-30 ..... 804
Grand River Dam Authority, project No. 2183 ..... 117
*Great Lakes Gas Transmission Co., et al., docket No. CP66-110, et al ..... 492, 1070
Great Northern Paper Co., project No. 2520 ..... 75
Great River Gas Co., et al., docket No. CP67-257 ..... 884
Grigsby, Jack W. (Operator), et al., docket No. RI61-96, et al ..... 822
Gulf Oil Corp. (successor to The British-American Oil Producing Co.), docket No. G-10615, et al ..... 325
Gulf Resources, Incorporated, et al., docket No. AR64-2 ..... 1025
Gulf States Utilities Co., docket No. E-7328 ..... 94, 261
Hamilton, Kansas, City of, et al., docket No. CP67-190 ..... 615
*Hamilton, Ohio, City of, et al., docket No. CP65-402, et al ..... 209, 598
Harrison, Lonnie D., Trustee (Operator), et al., docket No. RI64-167, et al ..... 983
Hennigh, Elmer, et al., docket No. RI67-310, et al ..... 707, 1107
Henry Ford and Son, Incorporated, et al., project No. 13 ..... 1172
Home Gas Co., docket No. CP67-222 ..... 741
*Humble Gas Transmission Co., et al., docket No. CP65-395, et al ..... 920
Humble Gas Transmission Co., docket No. CP67-153 ..... 536
Idaho Power Co., project No. 1971 ..... 290
Illinois Power Co., et al., docket No. E-7250 ..... 296
Interstate Power Co., docket No. E-7345 ..... 824, 909, 943
Iowa Electric Light and Power Co., docket No. E-7342 ..... 735
Iowa-Illinois Gas and Electric Co., et al., docket No. E-7333 ..... 749
Iowa Public Service Co., docket No. E-7343 ..... 987
Iowa Southern Utilities Co., docket No. E-7044 ..... 1018
Iowa Southern Utilities Co., docket No. E-7277 ..... 827
Iowa Southern Utilities Co., et al., docket No. E-7324 ..... 991
Iowa Southern Utilities Co., et al., docket No. E-7333 ..... 749
Iowa Southern Utilities Co., docket No. E-7351 ..... 1000, 1039
Iroquois Gas Corp., et al., docket No. CP66-349, et al ..... 1178

Page

J. M. Huber Corp., et al., docket No. RI67–113, et al. 707, 1107

Jack Properties, Inc., docket No. G–17344, et al. 398

Jeffersonville, Illinois, Village of, et al., docket No. CP67–151. 311

K. R. and T. Gas Co., et al., docket No. CP67–275 1002

Kansas-Nebraska Natural Gas Co., Inc., docket No. CP67–117 4

Kansas-Nebraska Natural Gas Co., Inc., docket No. CP67–118 83

Kansas-Nebraska Natural Gas Co., Inc., docket No. CP67–235 834

Kentucky-Tennessee Natural Gas Co., et al., docket No. CP67–270, et al 831

Kentucky West Virginia Gas Co., docket No. CP67–199 728

Killam & Hurd, et al., docket No. CI61–626, et al. 1042

Kimsey, Jr., Roy E. (Operator), et al., docket No. RI60–43, et al 1024

Lake Shore Pipe Line Co., docket No. CP67–163 585

Lake Superior District Power Co., project No. 2430 948

Land Withdrawn in Power Site Classification No. 304, docket No. DA–525–Oregon, Bureau of Land Management, Portland, Oregon 537

Lands Withdrawn in Power Site Reserve No. 66, docket Nos. DA–520 and 528, Oregon, Bureau of Land Management, Department of the Interior 234

Lands Withdrawn in Power Site Reserve No. 753 and Project Nos. 420, 1138, 1222, 1922 and 2328, docket No. DA–88–Alaska, Bureau of Land Management, Department of the Interior 541

Lawrenceburg Gas Transmission Corp., docket No. CP67–205 743

Lenox, Iowa, Town of, et al., docket No. CP67–189 524

License, Terms and Conditions of, Form L–10 (September 1, 1966) 860

Lineville, Iowa, City of, et al., docket No. CP66–240 879

Lone Star Gas Co., docket No. CP67–152 275

Lone Star Gas Co., docket No. CP67–237 836

Louisiana Gas Service Co., et al., docket No. CP67–232 811

Louisiana Land and Exploration Co., The, et al., docket No. CI67–1810, et al 1195

Lumar Gas Corp., docket No. CP66–412 47

McCarrick, Gouger & Mitchell, et al., docket No. RI60–426 876

McCloskey, Joseph, et al., docket No. CI67–1811, et al. 1195

McCommons, William E., d/b/a McCommons Exploration Co., et al., docket No. RI63–281 258, 1048

Page
McGee, Edith Fasterling, et al., docket No. CI67–1813, et al. 1195
McGee, Kenneth C., et al., docket No. CI67–1813, et al. 1195
Mantachie Natural Gas District, et al., docket No. CP67–169 886
Manufacturers Light and Heat Co., The, et al., docket No. CP66–344, et al. 502
Manufacturers Light and Heat Co., The, et al., docket No. CP66–347, et al. 509
Manufacturers Light and Heat Co., The, docket No. CP67–202 719
Manufacturers Light and Heat Co., The, docket No. CP67–262 1183
Marathon Oil Co., et al., docket No. CI67–1227, et al. 777
Marr, M. H., et al., docket No. CI66–892, et al. 1199
Matzen, Carl F., et al., docket No. RI67–114, et al. 707, 1107
Mayor and Aldermen of The Town of Algood, Tennessee, The, et al., docket No. CP67–206, et al. 831
Mercer, Missouri, City of, et al., docket No. CP66–240 879
Meyers, Joan B. Fasterling, et al., docket No. CI67–1812, et al. 1195
Michigan Gas and Electric Co., docket No. E–7222 514
Michigan Gas and Electric Co., docket No. E–7327 574
Michigan Gas Storage Co., docket No. CP67–230 1003
Michigan Wisconsin Pipe Line Co., docket No. CP65–190 88, 494
*Michigan Wisconsin Pipe Line Co., et al., docket No. CP66–109, et al. 492, 1070
Michigan Wisconsin Pipe Line Co., docket No. CP66–208 713
Michigan Wisconsin Pipe Line Co., et al., docket No. CP66–240 879
Michigan Wisconsin Pipe Line Co., et al., docket No. CP66–383 533
Michigan Wisconsin Pipe Line Co., docket No. CP67–176 479
Michigan Wisconsin Pipe Line Co., et al., docket No. CP67–196 501
Michigan Wisconsin Pipe Line Co., docket No. CP67–210 791
Michigan Wisconsin Pipe Line Co., et al., docket No. CP67–245 841
Michigan Wisconsin Pipe Line Co., et al., docket No. CP67–279 944
Michigan Wisconsin Pipe Line Co., docket No. RP64–38 751
Midhurst Oil Corp., et al., docket No. G–18150, et al. 983
*Midwestern Gas Transmission Co., et al., docket No. CP66–119, et al. 492, 1070
Midwestern Gas Transmission Co., docket No. CP67–98 49
Minnesota Power & Light Co., docket No E–7329 277

Page

Minnesota Power & Light Co., docket No. E-7350 1059

*Minnkota Power Cooperative, Inc., et al., docket No. E-7113 12

Mississippi Power & Light Co., docket No. E-7334 714

Mississippi Power & Light Co., docket No. E-7338, et al. 853

Mississippi River Transmission Corp., docket No. G-863 721

Mississippi River Transmission Corp., docket No. CP67-184 419

Mississippi River Transmission Corp., docket No. CP67-229 745

Mississippi River Transmission Corp., docket No. CP67-320 1023

*Mississippi Valley Gas Co., et al., docket No. RP66-9, et al. 920

Mobil Oil Corp., docket No. RI65-41 286

Mobil Oil Corp., et al., docket No. RI67-114, et al. 707, 1107

Monongahela Power Co., project No. 2477 984

Montana-Dakota Utilities Co., docket No. CP67-238 1034

Montana-Dakota Utilities Co., docket No. CP67-240 766

Montana-Dakota Utilities Co., docket No. CP67-271 1098

Montana Power Co., The, project No. 1473 888

Montana Power Co., The, project No. 2188 292

Montezuma, Iowa, Town of, et al., docket No. CP67-136 262

Moss Point, Mississippi, City of, et al., docket No. CP67-57 754

Mountain Fuel Supply Co., et al., docket No. CP67-172, et al. 818

Mountain Fuel Supply Co., docket No. CP67-191 773

Mystic Valley Gas Co., docket No. CP67-267 866

Napoleon, Indiana, Town of, et al., docket No. CP67-110 480

Natural Gas Board of the Town of Vina, Alabama, et al., docket No. CP67-283 1099

Natural Gas Gathering Co., et al., docket No. AR64-2 1025

Natural Gas Pipeline Co. of America, et al., docket No. CP61-149, et al. 738

Natural Gas Pipeline Co. of America, et al., docket No. CP64-89 801

Natural Gas Pipeline Co. of America, docket No. CP64-150 716

*Natural Gas Pipeline Co. of America, et al., docket No. CP65-169, et al. 649

*Natural Gas Pipeline Co. of America, docket No. CP66-169 (Phase II) 897, 1005

Natural Gas Pipeline Co. of America, et al., docket No. CP67-136 262

Natural Gas Pipeline Co. of America, docket No. CP67-171 312

Natural Gas Pipeline Co. of America, docket No. CP67-179 482

Natural Gas Pipeline Co. of America, docket No. CP67-183 483

Natural Gas Pipeline Co. of America, docket No. CP67-185 505

Natural Gas Pipeline Co. of America, et al., docket No. CP67-189 524

Page
Natural Gas Pipeline Co. of America, et al., docket No. CP67-315 1187
Natural Gas Pipeline Co. of America, et al., docket No. RP65-54, et al 7
Neches Petroleum Corp., et al., docket No. RI63-193, et al. 1027
New England Power Co., project No. 1904 67, 782
Niagara Mohawk Power Corp., docket No. E-7260 1176
Niagara Mohawk Power Corp., et al., project No. 13 1172
*North Penn Gas Co., et al., docket No. CP65-182, et al. 118, 310, 591
Northern Natural Gas Co., et al., docket No. CP63-41, et al. 597
Northern Natural Gas Co., et al., docket No. CP63-291, et al. 269
*Northern Natural Gas Co., et al., docket No. CP65-1, et al. 649, 1005
Northern Natural Gas Co., docket No. CP65-91 1019
Northern Natural Gas Co., et al., docket No. CP65-219, et al. 589
*Northern Natural Gas Co., et al., docket No. CP66-212, et al. 492, 1070
Northern Natural Gas Co., docket No. CP67-10 949
Northern Natural Gas Co., docket No. CP67-49 236
Northern Natural Gas Co., docket No. CP67-126 6
Northern Natural Gas Co., docket No. CP67-139 279
Northern Natural Gas Co., docket No. CP67-140 237
Northern Natural Gas Co., docket No. CP67-148 (Phase I) 601
Northern Natural Gas Co., docket No. CP67-162 96
Northern Natural Gas Co., docket No. CP67-193 485
Northern Natural Gas Co., docket No. CP67-194 (Phase I) 951
Northern Natural Gas Co., docket No. CP67-215 (Phase I) 910
Northern Natural Gas Co., et al., docket No. CP67-225, et al. 799
Northern Natural Gas Co., docket No. CP67-241 746
Northern Natural Gas Co., docket No. CP67-250 1008
*Northern Natural Gas Transportation Co., et al., docket No. CP66-213, et al 492, 1070
Northern States Power Co. (Minnesota), docket No. E-7325 238
Northern States Power Co. (Minnesota), docket No. E-7335 526
Northern States Power Co. (Minnesota), docket No. E-7347 955, 1026
Northwest Production Corp., et al., docket No. RI65-113, et al 528
O. F. & R. Oil Co., docket No. CS67-48 1010
*Ohio Fuel Gas Co., The, et al., docket No. CP66-207, et al. 209, 598
Ohio Fuel Gas Co., The, docket No. CP67-224 984
Orange and Rockland Utilities, Inc., docket No. E-7348 1094
Order No. 334, docket No. R-199 110
Order No. 334-A, docket No. R-199 587
Order No. 335, docket No. R-315 293
Order No. 336, docket No. R-316 295
Order No. 337, docket No. R-308 326
Order No. 338, docket No. R-310 511

Page
Order No. 339, docket No. R-318 700
Order No. 340, docket No. R-319 731
Order No. 341, docket No. R-304 775
Order No. 342, docket No. R-320 784
Order No. 343, docket No. R-305 813
Order No. 344, docket No. R-321 838
Order No. 344-A, docket No. R-321 1036
Order No. 345, docket No. R-322 867
Order No. 346, docket No. R-323 893
Order No. 347, docket No. R-324 898
Order No. 348, docket No. R-325 1037
Order No. 349, docket No. R-326 1101
Order No. 350, docket No. R-306 1125
Order No. 352, docket No. R-329 1204
Pacific Gas and Electric Co., et al., docket No. E-7248 614
Pacific Gas and Electric Co., project No. 187 1185
Pacific Gas and Electric Co., project No. 2155 540
Pacific Power & Light Co., docket No. E-7129 894
Pacific Power & Light Co., docket No. E-7326 603
Pacific Power & Light Co., project No. 2082 329
Pan American Petroleum Corp., docket No. G-16946 314
Pan American Petroleum Corp., et al., docket No. CI66-910, et al 1195
Pan American Petroleum Corp., et al., docket No. RI67-400, et al 1107
Panhandle Eastern Pipe Line Co., docket No. G-19461 263
Panhandle Eastern Pipe Line Co., docket No. CP65-87 911
*Panhandle Eastern Pipe Line Co., docket No. CP66-50 314, 703, 795
Panhandle Eastern Pipe Line Co., docket No. CP66-125 912
Panhandle Eastern Pipe Line Co., docket No. CP66-244 878
Panhandle Eastern Pipe Line Co., docket No. CP67-134, et al 107
Panhandle Eastern Pipe Line Co., docket No. CP67-170 616
Panhandle Eastern Pipe Line Co., docket No. CP67-208 576
Panhandle Eastern Pipe Line Co., et al., docket No. CP67-257 884
Panhandle Eastern Pipe Line Co., docket No. CP67-266 868
Peacock, Frank E., et al., project No. 2427 254
Pecos Co., et al., docket No. RI65-65, et al 528
Pend Oreille Mines & Metals Co., et al., project No. 1393, et al 896
Pennsylvania Gas Co., docket No. G-2136 420
Pennsylvania Gas Co., docket No. CP67-280 1061
Petersburg, Alaska, City of, project No. 2521 1186

Page

*Petroleum International, Inc. (Operator), et al., docket No. CI64–520, et al 963
Philadelphia Electric Co., project No. 2355 89, 91, 847, 1059
Philadelphia Electric Power Co., et al., project No. 405 871
Phillips Petroleum Co. (Operator), docket No. G–3244, et al 1040
Phillips Petroleum Co., et al., docket No. CI67–1226, et al 777
Princeton, Missouri, City of, et al., docket No. CP66–240 879
Public Service Co. of New Hampshire, project No. 2456 578
Public Utility District No. 1 of Snohomish County, Washington, et al., project No. 2157 957, 1205
Puget Sound Power & Light Co., project No. 2150 785
Reserve Oil & Gas Co., et al., docket No. G–18570, et al 1027
Rochester Gas and Electric Corp., project No. 2584 1206
*Rocky Mountain Power Co., project No. 2289 329, 900
Rodman and Late, et al., docket No. CS66–48, et al 281
Ruidoso Natural Gas Co., Inc., et al., docket No. CP67–236, et al 725
Sabine River Authority of Louisiana, et al., project No. 2305 786
Sabine River Authority of Texas, et al., project No. 2305 786
Sacramento Municipal Utility District, project No. 2101 903
St. Joseph Light and Power Co., et al., docket No. CP67–279 944
Salt River Project Agricultural Improvement and Power District, et al., docket No. E–7306 68, 495
Saltillo-Guntown Natural Gas District, Mississippi, et al., docket No. CP67–165 880
Samedan Oil Corp. (Operator), et al., issued February 2, 1967 267
Seattle, Washington, City of, et al., project No. 2144, et al 896
Shalett, H. T., et al., docket No. RI67–112, et al 78
Shenandoah Gas Co., docket No. CP65–287 870
Shenandoah Gas Co., docket No. CP67–216 486
Shenandoah Gas Co., docket No. CP67–272 913
Shenandoah Gas Co., docket No. CP67–273 1012
Sierra Pacific Power Co., issued March 27, 1967 607
Sims, Illinois, Village of, et al., docket No. CP67–223 722
Sinclair Oil & Gas Co., et al., docket No. G–19252, et al 109
Smith, L. E., et al., docket No. RI67–110, et al 78
Socony Mobil Oil Co., Inc. (now Mobil Oil Corp.), et al., docket No. G–12193, et al 822
*South Central Rural Electric Cooperative, Inc., et al., docket No. E–7113 12
South Georgia Natural Gas Co., docket No. CP67–95 264
South Georgia Natural Gas Co., et al., docket No. CP67–156 (Phase I) 757

Page
South Georgia Natural Gas Co., et al., docket No. CP67-264 883
South Georgia Natural Gas Co., docket No. RP67-14 496
South Texas Natural Gas Gathering Co., et al., docket No. CP66-346, et al 946
South Texas Natural Gas Gathering Co., docket No. CP67-263 1053
Southeastern Indiana Natural Gas Co., Inc., et al., docket No. CP67-133 80
Southern California Edison Co., project No. 1389 538
Southern Natural Gas Co., docket No. CP64-314 506, 870
Southern Natural Gas Co., docket No. CP67-145 241
Southern Natural Gas Co., docket No. CP67-168 780, 848
Southern Natural Gas Co., docket No. CP67-175 647
Southern Natural Gas Co., docket No. CP67-231 1055
Southern Natural Gas Co., docket No. CP67-244 817
Southern Natural Gas Co., et al., docket No. CP67-274 1115
Southern Natural Gas Co., docket No. CP67-289 1110
Southern Natural Gas Co., docket No. CP67-296 1193
Southern Natural Gas Co., et al., docket No. RP65-55, et al 7
Southern New Mexico Oil Corp., et al., docket No. RI65-35 806
Southern Union Gas Co., et al., docket No. G-513, et al 723
Southwest Gas Producing Co., Inc., et al., docket No. G-20046, et al 737
Springfield, Illinois, City of, et al., docket No. E-7250 296
Sun Oil Co., et al., docket No. CI66-891, et al 1199
Susquehanna Power Co., et al., project No. 405 871
Switzerland County Natural Gas Co., et al., docket No. CP67-129 50
Tacoma, Washington, City of, project No. 2016 489
Tenneco Oil Co., et al., docket No. G-18223, et al 255
Tennessee Gas Pipeline Co., a Division of Tenneco Inc., et al., docket No. CP66-269, et al 1195
Tennessee Gas Pipeline Co., a Division of Tenneco Inc., et al., docket No. CP66-420, et al 1178
Tennessee Gas Pipeline Co., a Division of Tenneco Inc., et al., docket No. CP67-165 880
Tennessee Gas Pipeline Co., a Division of Tenneco Inc., docket No. CP67-211 (Phase I) 989
Tennessee Gas Pipeline Co., a Division of Tenneco Inc., docket No. CP67-258 915
Tennessee Gas Pipeline Co., a Division of Tenneco Inc., et al., docket No. CP67-283 1099
Tennessee Gas Pipeline Co., a Division of Tenneco Inc., docket No. RP67-22 1063

Page

*Tennessee Gas Transmission Co., et al., docket No. CP66-263, et al ---- 1128

Tennessee Gas Transmission Co., et al., docket No. RP65-56, et al ---- 7

Texaco Inc., docket No. RI67-342 ---- 756

Texas Eastern Transmission Corp., et al., docket No. G-12446, et al ---- 1199

Texas Eastern Transmission Corp., docket No. G-12706, et al ---- 98

Texas Eastern Transmission Corp., et al., docket No. CP64-5, et al ---- 976

Texas Eastern Transmission Corp., et al., docket No. CP67-110 ---- 480

Texas Eastern Transmission Corp., et al., docket No. CP67-121 ---- 1

Texas Eastern Transmission Corp., et al., docket No. CP67-146 ---- 285

Texas Eastern Transmission Corp., et al., docket No. CP67-169 ---- 886

Texas Eastern Transmission Corp., et al., docket No. CP67-278 ---- 1020

Texas Eastern Transmission Corp., docket No. RP65-59 ---- 100, 610

Texas Eastern Transmission Corp., docket No. RP66-12 ---- 306

Texas Gas Pipe Line Corp., et al., docket No. CP66-418, et al ---- 1027

Texas Gas Pipe Line Corp., et al., docket No. CP67-20, et al ---- 890

Texas Gas Transmission Corp., docket No. CP61-123 ---- 1202

*Texas Gas Transmission Corp., et al., docket No. CP66-13, et al ---- 209, 598

Texas Gas Transmission Corp., et al., docket No. CP67-129 ---- 50

Texas Gas Transmission Corp., et al., docket No. CP67-133 ---- 80

Texas Gas Transmission Corp., docket No. CP67-174 ---- 530

Texas Gas Transmission Corp., docket No. CP67-198 ---- 881

Texas Gas Transmission Corp., docket No. CP67-207 ---- 532

Texas Gas Transmission Corp., docket No. CP67-251 ---- 1033

Texas Gas Transmission Corp., docket No. CP67-252 ---- 840

Texas Gas Transmission Corp., et al., docket No. RP65-57, et al ---- 7

Texas Gas Transmission Corp., docket No. RP67-10 ---- 612

Texas Gas Utilities Co., docket No. CP67-72 ---- 820

*Transcontinental Gas Pipe Line Corp., et al., docket No. CP65-181, et al ---- 118, 310, 591

Transcontinental Gas Pipe Line Corp., docket No. CP66-233 ---- 959

Page
Transcontinental Gas Pipe Line Corp., et al., docket No. CP67-34, et al 890
Transcontinental Gas Pipe Line Corp., docket No. CP67-143 488
Transcontinental Gas Pipe Line Corp., docket No. CP67-160 266
Transcontinental Gas Pipe Line Corp., docket No. CP67-173 1112
Transcontinental Gas Pipe Line Corp., docket No. CP67-177 320
Transcontinental Gas Pipe Line Corp., docket No. CP67-200 321
Transcontinental Gas Pipe Line Corp., docket No. CP67-269 917
Transcontinental Gas Pipe Line Corp., docket No. CP67-322 1186
Transwestern Pipeline Co., et al., docket No. CP61-299, et al 789
Transwestern Pipeline Co., et al., docket No. CP63-290, et al 269
Transwestern Pipeline Co., docket No. CP64-34 582
*Transwestern Pipeline Co., et al., docket No. CP65-208, et al 1005
*Transwestern Pipeline Co., (Phase II), et al., docket No. CP65-208, et al 649
Transwestern Pipeline Co., docket No. CP66-292, et al 298
Transwestern Pipeline Co., docket No. CP67-81 421
Transwestern Pipeline Co., docket No. CP67-125 85
Transwestern Pipeline Co., docket No. CP67-131, et al 92
Transwestern Pipeline Co., docket No. CP67-292 1114
Trebol Drilling Co., et al., docket No. RI65-35 806
Truckee Public Utility District, et al., docket No. E-7248 614
Trunkline Gas Co., docket No. CP66-131, et al 618
Trunkline Gas Co., et al., docket No. CP66-346, et al 946
Trunkline Gas Co., et al., docket No. CP67-101, et al 845
Trunkline Gas Co., et al., docket No. CP67-151 311
Trunkline Gas Co., et al., docket No. CP67-223 722
Trunkline Gas Co., et al., docket No. CP67-232 811
Trunkline Gas Co., docket No. CP67-287 1048
Turnbull & Zoch Drilling Co. (Operator), et al., docket No. G-17960, et al 255
U.S. Natural Gas Corp., et al., docket No. CI62-594, et al 818
Union Carbide Corp., project No. 1856, et al 517
Union Electric Co., et al., docket No. E-7250 296
Union Electric Co., et al., docket No. E-7324 991
Union Electric Co., project No. 2277 113
Union Texas Petroleum, a Division of Allied Chemical Corp., et al., docket No. G-2935, et al 890
Union Texas Petroleum, et al., docket No. G-13221, et al 737

Page

Union Texas Petroleum, a Division of Allied Chemical Corp., et al., docket No. CI66–1296, et al 1027
United Cities Gas Co., et al., docket No. CP67–146 285
United Fuel Gas Co., docket No. G–10658 703, 1203
United Fuel Gas Co., docket No. CP64–73 821
*United Fuel Gas Co., et al., docket No. CP65–198, et al 118, 310, 591
United Fuel Gas Co., docket No. CP67–228 1014
United Fuel Gas Co., et al., docket No. CP67–278 1020
United Fuel Gas Co., et al., docket No. RP66–2, et al 244, 507
United Gas Pipe Line Co., docket No. G–13002 399
United Gas Pipe Line Co., docket No. G–15123 874
United Gas Pipe Line Co., docket No. G–16556 875
United Gas Pipe Line Co., docket No. CP60–14 978
United Gas Pipe Line Co., docket No. CP66–280 717
United Gas Pipe Line Co., et al., docket No. CP67–57 754
United Gas Pipe Line Co., docket No. CP67–93 242
United Gas Pipe Line Co., docket No. CP67–114 87
United Gas Pipe Line Co., docket No. CP67–142 114
United Gas Pipe Line Co., docket No. CP67–147 323
United Gas Pipe Line Co., docket No. CP67–161 308
United Gas Pipe Line Co., docket No. CP67–239 797
United Gas Pipe Line Co., docket No. CP67–242 1016
United Gas Pipe Line Co., et al., docket No. CP67–315 1187
United Gas Pipe Line Co., et al., docket No. RP61–18, et al 7, 822
*United Natural Gas Co., et al., docket No. CP65–182, et al 118, 310, 591
United Natural Gas Co., et al., docket No. CP66–349, et al 1178
United Natural Gas Co., docket No. CP67–157 423
United Natural Gas Co., docket No. CP67–214 583
United States Department of the Interior, Southwestern Power Administration, docket No. E–7172 1096
*Van Grisso Oil Co., et al., docket No. CI63–59, et al 963
*Virginia Electric & Power Co., docket No. E–6684 340, 767
Virginia Electric & Power Co., et al., docket No. E–7308 850
Waechter, Leland C., et al., docket No. RI67–400, et al 1107
West Ohio Gas Co., et al., docket No. CP66–383 533
West Ohio Gas Co., et al., docket No. CP67–245 841
West Texas Gathering Co., et al., docket No. CP67–120, et al 799
Western Natural Gas Co., et al., docket No. G–19252, et al 109
Western Natural Gas Co., et al., docket No. RI67–310, et al 707, 1107
Wilcox County Gas District, The, et al., docket No. CP67–274 1115
Wisconsin Electric Power Co., docket No. E–7336 704
Wisconsin Michigan Power Co., project No. 2523 760
Woods Falls B Hydro, Inc., et al., project No. 2427 254
Yadkin, Inc., project No. 2197 10

Page
Union Texas Petroleum, a Division of Allied Chemical Corp., et al., docket No. CI66–1296, et al. .......... 1027
United Cities Gas Co., et al., docket No. CP67–146 .......... 285
United Fuel Gas Co., docket No. G–10658 .......... 703, 1203
United Fuel Gas Co., docket No. CP64–73 .......... 824
*United Fuel Gas Co., et al., docket No. CP66–129, et al. .... 148, 310, 591
United Fuel Gas Co., docket No. CP67–228 .......... 1014
United Fuel Gas Co., et al., docket No. CP67–275 .......... 1020
United Fuel Gas Co., et al., docket No. RP60–3, et al. .... 344, 507
United Gas Pipe Line Co., docket No. G–13002 .......... 390
United Gas Pipe Line Co., docket No. G–13123 .......... 371
United Gas Pipe Line Co., docket No. G–16850 .......... 575
United Gas Pipe Line Co., docket No. CP60–144 .......... 978
United Gas Pipe Line Co., docket No. CP66–280 .......... 217
United Gas Pipe Line Co., et al., docket No. CP67–37 .......... 754
United Gas Pipe Line Co., docket No. CP67–93 .......... 242
United Gas Pipe Line Co., docket No. CP67–114 .......... 87
United Gas Pipe Line Co., docket No. CP67–142 .......... 114
United Gas Pipe Line Co., docket No. CP67–147 .......... 328
United Gas Pipe Line Co., docket No. CP67–191 .......... 398
United Gas Pipe Line Co., docket No. CP67–239 .......... 707
United Gas Pipe Line Co., docket No. CP67–242 .......... 1010
United Gas Pipe Line Co., et al., docket No. CP67–315 .......... 1157
United Gas Pipe Line Co., et al., docket No. RI61–18, et al. .... 7, 822
*United Natural Gas Co., et al., docket No. CP65–182 et al. .... 148, 310, 591
United Natural Gas Co., et al., docket No. CP66–349, et al. .... 1179
United Natural Gas Co., docket No. CP67–177 .......... 423
United Natural Gas Co., docket No. CP67–314 .......... 583
United States Department of the Interior, Southwestern Power Administration, docket No. E–7172 .......... 1096
*Van Grisso Oil Co., et al., docket No. CI63–50, et al. .......... 983
*Virginia Electric & Power Co., docket No. E–6084 .......... 340, 707
Virginia Electric & Power Co., et al., docket No. E–7308 .......... 850
Waechter, Leland C., et al., docket No. RI67–406, et al. .......... 1107
West Ohio Gas Co., et al., docket No. CP66–383 .......... 533
West Ohio Gas Co., et al., docket No. CP67–245 .......... 841
West Texas Gathering Co., et al., docket No. CP67–120, et al. .......... 799
Western Natural Gas Co., et al., docket No. G–19252, et al. .......... 109
Western Natural Gas Co., et al., docket No. RI67–310, et al. .... 707, 1107
Wilcox County Gas District, The, et al., docket No. CP67–274 .......... 1115
Wisconsin Electric Power Co., docket No. E–7336 .......... 704
Wisconsin Michigan Power Co., project No. 2523 .......... 790
Woods Falls B Hydro, Inc., et al., project No. 2427 .......... 254
Yadkin, Inc., project No. 2197 .......... 10

# TABLE OF CASES CITED

Page

Alabama Power Co. (project 2146), 18 FPC 257 ..... 625

Alabama-Tennessee Natural Gas Co. (G-5471), 31 FPC 208, 768, 928, *affirmed* Alabama-Tennessee Natural Gas Co. *v.* F.P.C., 359 F. 2d 318 (CA5-1966), cert. denied 385 U.S. 847 (1966), rehearing denied 385 U.S. 964 (1966) ..... 98, 245, 709, 751

Allen, Chairman, Twelfth Region Wage Stabilization Board *v.* Grand Central Aircraft, 347 U.S. 535 (1954) ..... 1150

Amerada Petroleum Corp. (CI62-1544), 29 FPC 171 ..... 335

Antioch Milling Co. *v.* Public Service Co. of Northern Illinois, 123 N.E. 2d 302 (1954) ..... 249

Area Rate Proceeding (Permian Basin Area) (AR61-1), 34 FPC 159 ..... 109, 151, 303, 529, 584, 681, 730, 802, 804, 806, 1010, 1040, 1042

Area Rate Proceeding (Permian Basin Area) (AR61-1), 34 FPC 424 ..... 529

Area Rate Proceeding (Permian Basin Area) (AR61-1), 34 FPC 1068 ..... 109, 530, 584, 730, 806, 1040

Arkansas Louisiana Gas Co. *v.* F.P.C., 113 F. 2d 281 (CA5-1940) ..... 226

Arkansas Power & Light Co. (project 271), 26 FPC 549 ..... 638

Arkansas Power & Light Co. (E-7090), 34 FPC 747, *affirmed* Arkansas Power & Light Co. *v.* F.P.C., 368 F. 2d 376 (CA8-1966) ..... 34, 550

Ashbacker Radio Corp. *v.* F.C.C., 326 U.S. 327 (1945) ..... 161, 1132

Associated Industries of New York State, Inc. *v.* Ickes, Secretary of the Interior, 134 F. 2d 694 (CA2-1943) ..... 251

Atlantic Refining Co., The *v.* F.P.C., 370 F. 2d 57 (CA5-1967) ..... 454

Atlantic Refining Co. *v.* P.S.C. of New York, 360 U.S. 378 (1959) ..... 218, 397, 434, 969, 1080, 1196

Atlantic Seaboard Corp. (G-1384), 11 FPC 43 ..... 248, 1090

Atlantic Seaboard Corp. (G-16401), 28 FPC 860 ..... 166

Atlantic Seaboard Corp. (G-17774), 28 FPC 1145 ..... 186

Atlantic Seaboard Corp. (G-17774), 29 FPC 385 ..... 186

Bangor Hydro-Electric Co. *v.* F.P.C., 355 F. 2d 13 (CA1-1966) ..... 624

Battle Creek Gas Co. *v.* F.P.C., 281 F. 2d 42 (CADC-1960) ..... 937

Brandenfels *v.* Day, 316 F. 2d 375 (CADC-1963) ..... 249

California, People of the State of *v.* F.P.C., 369 U.S. 482 (1962) ..... 36, 257

California *v.* Lo-Vaca Gathering Co., 379 U.S. 366 (1965) ..... 47, 303, 432

California Oregon Power Co., The (project 2082), 23 FPC 59 ..... 625

Carolina Aluminum Co. (project 2197), 19 FPC 704 ..... 634

Central Illinois Public Service Co. *v.* F.P.C., 338 F. 2d 682 (CA7-1964) ..... 149, 1170

Central Kentucky Natural Gas Co. (G-2450), 15 FPC 700 ..... 188

Central Maine Power Co. (project 2284), 28 FPC 302 ..... 624

Central Maine Power Co. *v.* F.P.C., 345 F. 2d 875 (CA1-1965) ..... 624

Chattanooga Gas Co. *v.* East Tennessee Natural Gas Co. (RP65-3), 35 FPC 902 ..... 1169

Cincinnati Gas & Electric Co., The (E-7125), 35 FPC 99 ..... 34, 550

Coastwise Line *v.* U.S., 157 F. Supp. 305 (1957) ..... 249

Colorado-Arizona-California Express, Inc. *v.* U.S., 224 F. Supp 894 (1963) ..... 334

Colorado Interstate Gas Co. (G-1115), 11 FPC 324 ..... 215

Colorado Interstate Gas Co. (G-2260), 19 FPC 1012 ..... 215

Colorado Interstate Gas Co. (CP64-294), 33 FPC 281 ..... 692

Colton, California, City of *v.* Southern California Edison Co. (E-6821), 26 FPC 223, *affirmed sub nom.* F.P.C. *v.* Southern California Edison Co., 376 U.S. 205 (1964); reversing 310 F. 2d 784 (CA9-1962) ..... 551

Columbia Gulf Transmission Co. (CP65-102), 37 FPC 118 ..... 214, 1141

Columbian Fuel Corp. *v.* F.P.C., 239 F. 2d 61 (CADC-1956) ..... 249

Connecticut Light and Power Co., The (IT-5665), 6 FPC 104 ..... 555

Connecticut Light and Power Co. *v.* F.P.C., 324 U.S. 515 (1945) ..... 552

Page

Continental Oil Co. (G–16840), 30 FPC 1551 ........ 314
Continental Oil Co. (Operator), issued March 18, 1963, 29 FPC 525 ........ 756
Courier Post Publishing Co. *v.* F.C.C., 104 F. 2d 213 (CADC–1939) ........ 334
Dairyland Power Cooperative (E–7113), 37 FPC 12 ........ 495
Detroit, City of *v.* Panhandle Eastern Pipe Line Co. (G–200), 6 FPC 951 ........ 256
Dorchester Gas Producing Co. (RI64–749), 32 FPC 1339 ........ 258
Dorchester Gas Producing Co. (RI64–749), 33 FPC 88 ........ 258
Duke Power Co. (project 2232), 20 FPC 360 ........ 625
East Tennessee Natural Gas Co. (CP64–21), 32 FPC 158 ........ 178
Eastern Air Lines, Inc. *v.* Civil Aeronautics Board, 294 F. 2d 235 (CADC–1961), cert. denied 368 U.S. 927 (1961) ........ 249
El Paso Natural Gas Co. (G–12580), 22 FPC 900 ........ 454
El Paso Natural Gas Co. (G–16235), 30 FPC 77 ........ 657
El Paso Natural Gas Co. (CP64–211), 35 FPC 321 ........ 1041
El Paso Natural Gas Co. *v.* F.P.C., 281 F. 2d 567 (CA5–1960), cert. denied California *v.* F.P.C., 366 U.S. 912 (1961) ........ 98
F.C.C. *v.* RCA Communications, 346 U.S. 86 (1953) ........ 130
F.C.C. *v.* Sanders Brothers Radio Station, 309 U.S. 470 (1940) ........ 251
FHA *v.* Burr, 309 U.S. 242 (1940) ........ 34
Federal Land Bank *v.* Priddy, 295 U.S. 229 (1935) ........ 36
F.P.C. *v.* Amerada Petroleum Corp., 379 U.S. 687 (1965) ........ 454
F.P.C. *v.* Hope Natural Gas Co., 320 U.S. 591 (1944) ........ 152, 462, 1080
F.P.C. *v.* Hunt, 376 U.S. 515 (1964) ........ 434
F.P.C. *v.* Idaho Power Co., 344 U.S. 16 at 17 (1952) ........ 335
F.P.C. *v.* Natural Gas Pipeline Co., 315 U.S. 575 (1942) ........ 1150
F.P.C. *v.* New England Power Co., 349 F. 2d 258 (CA1–1965) ........ 193
F.P.C. *v.* Pan American Petroleum Corp., 381 U.S. 762 (1965) ........ 454
F.P.C. *v.* Panhandle Eastern Pipe Line Co., 337 U.S. 498 (1949) ........ 1153
F.P.C. *v.* Southern California Edison Co., 376 U.S. 205 (1964) ........ 34
F.P.C. *v.* Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1961) ........ 432
F.P.C. *v.* Union Electric Co., 381 U.S. 90 (1965) ........ 634
Federal Trade Commission *v.* Bunte Bros., 312 U.S. 349 (1941) ........ 1153
Federal Trade Commission *v.* Cement Institute, 333 U.S. 683 (1947) ........ 44
First Iowa Hydro-Electric Coop. *v.* F.P.C., 328 U.S. 152 (1946) ........ 335
Florida Economic Advisory Council *v.* F.P.C., 251 F. 2d 643 (CADC–1957), cert. denied 356 U.S. 959 (1958) ........ 453
Florida Gas Transmission Co. (RP61–3), 31 FPC 1402 ........ 472
Fuels Research Council, Inc. *v.* F.P.C., 374 F. 2d 842 (CA7–1967) ........ 508
General Motors Acceptance Corp. *v.* U.S., 286 U.S. 49 (1932) ........ 36
Georgia Power Co. (E–7099), 35 FPC 436 ........ 928
Georgia Power Co. (E–7099), 35 FPC 818 ........ 928
Georgia Power Co. (project 2177), 21 FPC 296 ........ 638
Granite City Steel Co. *v.* F.P.C., 320 F. 2d 711 (CADC–1963) ........ 688
Great Northern Ry. Co. *v.* U.S., 209 F. Supp. 230 (1962) ........ 334
Grigsby, Jack W. (Operator) (RI61–96), 32 FPC 529 ........ 399
Hamilton, Ohio, City of (CP65–402), 37 FPC 209 ........ 1141
Hartford Electric Light Co. *v.* F.P.C., 131 F. 2d 953 (CA2–1942), cert. denied 319 U.S. 741 (1942) ........ 568
Henderson's Tobacco, 11 Wall 652 (1870) ........ 36
Home Gas Co. *v.* F.P.C., 231 F. 2d 253 (CADC–1956), cert. denied 352 U.S. 831 (1956) ........ 204, 226, 1137
Hope Natural Gas Co. *v.* F.P.C., 134 F. 2d 287 (CA4–1943), *reversed on other grounds* 320 U.S. 591 (1944) ........ 268
Hope Natural Gas Co. *v.* F.P.C., 196 F. 2d 803 (CA4–1952) ........ 1150
Houston Texas Gas & Oil Corp. (G–9262), 16 FPC 118; 17 FPC 303, *affirmed sub nom.* Florida Economic Advisory Council *v.* F.P.C., 251 F. 2d 643 (CADC–1957), cert. denied 356 U.S. 959 (1958) ........ 427, 687
Huber Corp. *v.* Wm. Denman, 367 F. 2d 104 (CA5–1960) ........ 707
Humble Oil & Refining Co. (G–9287), 32 FPC 49 ........ 809
Humble Oil & Refining Co. (G–9287), 33 FPC 830 ........ 9, 612
Humble Oil & Refining Co. *v.* F.P.C., 236 F. 2d 819 (CA5–1956) ........ 249
Hunt, H. L. (RI62–467), 28 FPC 897, *reversed on other grounds sub nom.* Margaret Hunt Hill, Trustee *v.* F.P.C., 335 F. 2d 355 (CA5–1964) ........ 335
Indiana & Michigan Electric Co. (E–7089), 33 FPC 739, *affirmed* Indiana & Michigan Electric Co. *v.* F.P.C., 365 F. 2d 180 (CA7–1966), cert. denied 385 U.S. 972 (1966) ........ 34, 549

| | Page |
|---|---|
| International Paper Co. (project 2375), 33 FPC 291 | 624 |
| Interstate Natural Gas Co., Inc. (G–149), 3 FPC 416, *affirmed* 331 U.S. 682 (1947) | 932 |
| Isbrandtsen Co. *v.* U.S., 96 F. Supp. 883 (1951), *affirmed* 342 U.S. 950 (1952) | 338 |
| Jersey Central Power & Light Co. *v.* F.P.C., 319 U.S. 61 (1943) | 33, 552 |
| Joint Use of Water Power Project Works or Parts Thereof for Certain Water Supply Purposes (R–249), 33 FPC 711 | 646 |
| Kansas-Nebraska Natural Gas Co., Inc. (CP62–215), 29 FPC 1058 | 687 |
| Kawananahoa *v.* Polyblank, 205 U.S. 349 (1907) | 374 |
| Kentucky Natural Gas Corp. *v.* F.P.C., 159 F. 2d 215 (CA6–1947) | 193, 217 |
| Lexington, Cities of *v.* F.P.C., 295 F. 2d 109 (CA4–1961) | 98, 250 |
| Lodi Telephone Co. *v.* P.S.C., 55 N.W. 2d 379 (1953) | 226 |
| Louisiana Public Service Commission *v.* F.P.C., 359 F. 2d 525 (CA5–1966), cert. denied 385 U.S. 833 (1966) | 597 |
| Luckenbach Steamship Co., Inc. *v.* U.S., 179 F. Supp. 605 (1959) | 249 |
| Lvnchburg Gas Co. *v.* F.P.C., 336 F. 2d 942 (CADC–1964) | 126, 214, 591, 599 |
| Manhattan G. E. Co. *v.* Commissioner of Internal Revenue, 297 U.S. 129 (1936) | 44 |
| Manufacturers Light & Heat Co. *v.* F.P.C., 206 F. 2d 404 (CA3–1953) | 1170 |
| Metropolitan Edison Co. (EP–1888), 6 FPC 189 | 518 |
| McCulloch *v.* Maryland, 4 Wheat 316 (1819) | 18 |
| McLaren *v.* Fleischer, 256 U.S. 477 (1921) | 23 |
| Michigan Consolidated Gas Co. (CP65–38), 33 FPC 912 | 164 |
| Michigan Consolidated Gas Co. *v.* F.P.C., 167 F. 2d 264 (CADC–1948) | 256 |
| Michigan Wisconsin Gas Co. *v.* F.P.C. 283 F. 2d 204 (CADC–1960), cert. denied 364 U.S. 913 (1960) | 307, 492 |
| Midwestern Gas Transmission Co. (RP61–19), 34 FPC 973 | 248 |
| Minneapolis Gas Co. *v.* F.P.C., 278 F. 2d 870 (CADC–1960), cert. denied 364 U.S. 891 (1960) | 165 |
| Minneapolis Gas Co. *v.* F.P.C., 294 F. 2d 212 (CADC–1961) | 249 |
| Mississippi River Fuel Corp. *v.* F.P.C., 202 F. 2d 899 (CA3–1953) | 268 |
| Mississippi River Fuel Corp. *v.* F.P.C., 252 F. 2d 619 (CADC–1957) | 204 |
| Montana-Dakota Utilities Co. (CP61–234), 30 FPC 200 | 477 |
| Montana-Dakota Utilities Co. *v.* Northwestern Public Service Co., 341 U.S. 246 (1951) | 268 |
| Montana Power Co., The (G–1712), 11 FPC 1 | 938 |
| Montana Power Co., The (G–17370), 35 FPC 191 | 1088 |
| Montana Power Co., The (project 2188), 15 FPC 1330 | 625 |
| Montana Power Co. *v.* F.P.C., 112 F. 2d 371 (CA9–1940) | 627 |
| Monticello, Georgia, City of (CP63–156), 29 FPC 912 | 848 |
| National Labor Relations Board *v.* Seven-Up Bottling Co., 344 U.S. 344 (1953) | 207 |
| Natural Gas Pipeline Co. of America (G–4280), 16 FPC 80 | 691 |
| Natural Gas Pipeline Co. of America (CP62–243), 34 FPC 771 | 126 |
| Nebraska Power Co. (IT–5954), 5 FPC 8 | 16 |
| New England Divisions Case, 261 U.S. 184 (1923) | 205 |
| New Hampshire Water Resources Board (E–6807), 20 FPC 99 | 634 |
| New York C. & H.R.R. *v.* I.C.C., 168 F. 131 (S.D.N.Y–1909) | 1139 |
| New York Trust *v.* Eisner, 256 U.S. 345 (1921) | 162 |
| Niagara Mohawk Power Corp. (project 2424), 32 FPC 1404 | 636 |
| Niagara Mohawk Power Corp. *v.* F.P.C., 379 F. 2d 153 (CADC–1967) | 1138 |
| Northern Natural Gas Co. (G–1021), 7 FPC 638 | 256 |
| Northern Natural Gas Co. (CP61–132), 28 FPC 1155, *affirmed* Mid-America Pipeline Co. *v.* F.P.C. 330 F. 2d 226 (CADC–1964) | 249 |
| Northern Natural Gas Co. (CP62–85), 30 FPC 859 | 687 |
| Northern Natural Gas Co. (CP64–228), 33 FPC 501 | 939 |
| Northern Natural Gas Co. (CP64–255)(Phase II), 33 FPC 1163 | 687, 930 |
| Norwegian Nitrogen Prod. Co. *v.* U.S., 288 U.S. 294 (1933) | 1153 |
| Northwest Paper Co., The (project 2363), 32 FPC 1413 | 624 |
| Northwestern Bell Telephone Co. *v.* Nebraska State Railway Commission, 297 U.S. 471 (1936) | 1140 |
| Olin Gas Transmission Corp. (G–8559), 17 FPC 685 | 924 |
| Pacific Gas and Electric Co. (DI–163), 2 FPC 516 | 638 |
| Pacific Gas Transmission Co. (G–17350), 24 FPC 134 | 1088 |
| Pacific Gas Transmission Co. (CP65–213), 35 FPC 1003 | 1088 |

Page

Pacific Power & Light Co. *v.* F.P.C., 184 F. 2d 272 (CADC–1950) ........ 642

Pan American Petroleum Corp. *v.* F.P.C., 268 F. 2d 827 (CA10–1959) .... 256

Panhandle Eastern Pipe Line Co. (CP63–159), 30 FPC 1260 .......... 463, 962

Panhandle Eastern Pipe Line Co. (CP66–50), 36 FPC 1107 ........ 923

Panhandle Eastern Pipe Line Co. *v.* F.P.C., 169 F. 2d 881 (CADC–1948), cert. denied 335 U.S. 854 (1948) .......... 131, 217, 1141

Panhandle Eastern Pipe Line Co. *v.* F.P.C., 316 F. 2d 659 (CADC–1963), cert. denied 375 U.S. 881 (1963) .......... 98

Panhandle Eastern Pipe Line Co. *v.* F.P.C., 343 F. 2d 905 (CA8–1965) ... 256

Pennsylvania Water & Power Co. *v.* F.P.C., 343 U.S. 414 (1952) ........ 33, 551

People *ex rel.* Wood *v.* Sands, 36 Pac. 404 (1894) .......... 1148

Peoples Bank *v.* Eccles, 161 F. 2d 636 (CADC–1947) .......... 44

Permian Basin Pipeline Co. (G–1928), 12 FPC 85 .......... 694

Phillips Petroleum Co. *v.* Wisconsin, 347 U.S. 672 (1954) .......... 433, 1137

Pittsburgh, City of *v.* F.P.C., 237 F. 2d 741 (CADC–1956) .......... 180, 492, 690

Posadas *v.* National City Bank, 296 U.S. 497 (1936) .......... 37

Public Service Commission of New York *v.* F.P.C., 257 F. 2d 717 (CA3–1958), *affirmed sub nom.* Atlantic Refining Co. *v.* Public Service Commission of New York, 360 U.S. 378 (1959) .......... 1199

Public Service Commission of New York *v.* F.P.C., 287 F. 2d 143 (CADC–1960 .......... 1200

Public Service Commission of New York *v.* F.P.C., 327 F. 2d 893 (CADC–1964) .......... 256

Public Service Commission of New York *v.* F.P.C., 373 F. 2d 816 (CADC–1967) .......... 459, 970

Public Service Co. of Indiana, Inc. (E–7163), 34 FPC 1513, *affirmed* Public Service Co. of Indiana, Inc. *v.* F.P.C., 375 F. 2d 100 (CA7–1967) .......... 34, 550

Public Service Co. of New Hampshire (project 2288), 27 FPC 830 .......... 518, 622

Public Utility District No. 1 of Skamania County, Washington (project 2199), 32 FPC 444 .......... 334

Puget Sound Power and Light Co. (E–6753), 17 FPC 840 .......... 1122

Red Rock *v.* Henry, 106 U.S. 596 (1882) .......... 36

Reserve Oil and Gas Co. (G–18570), 35 FPC 309 .......... 529

Ringling *v.* Ringling Bros.-Barnum & Bailey Com. Shows, 49 A. 2d 603, 53 A. 2d 441 (1947) .......... 1090

Rochester Gas and Electric Corp. *v.* F.P.C., 344 F. 2d 594 (CA2–1965), cert. denied 382 U.S. 832 (1965) .......... 1207

Rodman and Late (CS66–48), 37 FPC 281 .......... 584, 1010, 1040

Rumford Falls Power Co. *v.* F.P.C., 355 F. 2d 683 (CA1–1966) .......... 646

Scenic Hudson Preservation Conference *v.* F.P.C., 354 F. 2d 608 (CA2–1965), cert. denied *sub nom.* Consolidated Edison Co. *v.* Scenic Hudson Preservation Conference, 384 U.S. 941 (1966) .... 105, 146, 335, 492, 665, 1156

Shrewsbury Municipal Light Department *v.* New England Power Co. (E–7021), 32 FPC 373, *affirmed sub nom.* New England Power Co. *v.* F.P.C., 349 F. 2d 258 (CA1–1965) .......... 193, 214

Skelly Oil Co. *v.* F.P.C., 375 F. 2d 6 (CA10–1967) .......... 281, 459

Sohio Petroleum Co. (G–17012), 35 FPC 900 .......... 1041

South Carolina Electric & Gas Co. (E–6468), 29 FPC 624 .......... 348

South Carolina Electric & Gas Co. *v.* F.P.C., 338 F. 2d 898 (CA4–1964) .. 347

South Georgia Natural Gas Co. (G–9892), 22 FPC 211 .......... 848

Southern Natural Gas Co. (G–1907), 12 FPC 516 .......... 848

Southern Natural Gas Co. (G–18632), 25 FPC 925 .......... 939

Southern Natural Gas Co. (CP63–26), 31 FPC 789 .......... 848

Southern Steamship Co. *v.* National Labor Relations Board, 316 U.S. 31 (1942) .......... 43

Southwestern Public Service Co. (E–7038), 33 FPC 343 .......... 695

Sun Oil Co., issued October 21, 1965, 34 FPC 1195 .......... 1041

Sunray DX Oil Co. *v.* F.P.C., 370 F. 2d 181 (CA10–1966) .......... 969

Sunray Mid-Continent Oil Co. *v.* F.P.C., 364 U.S. 137 (1960) .......... 756

Susquehanna Power Co., The (project 405), 21 FPC 161 .......... 629

Tennessee Gas Transmission Co. (G–11980), 28 FPC 1100 .......... 8

Tennessee Gas Transmission Co. (CP65–352), 34 FPC 115 .......... 145

Tennessee Gas Transmission Co. *v.* F.P.C., 340 F. 2d 100 (CA10–1964) .. 1196

Texas Eastern Transmission Corp. (G–2573), 14 FPC 116 .......... 126

Page

Texas Eastern Transmission Corp. (RP65–59), 34 FPC 98 ........ 99
Texas Eastern Transmission Corp. (RP66–12), 36 FPC 959 ........ 508, 611
Texas Eastern Transmission Corp. (RP66–12), 37 FPC 306 ........ 508, 611
Texas Eastern Transmission Corp. *v.* F.P.C., 357 F. 2d 232 (CA5–1966) ........ 307
Texas Gas Corp. *v.* F.P.C., 250 F. 2d 27 (CADC–1957) ........ 249
Texas Gas Transmission Corp. (G–17335), 22 FPC 378 ........ 215
Texas Gas Transmission Corp. (RP67–10), 36 FPC 835 ........ 508
Texas Gas Transmission Corp. *v.* Mississippi P.S.C., 133 So. 2d 526 (1961) ........ 938
Texas-Ohio Gas Co. *v.* F.P.C., 207 F. 2d 615 (CADC–1953) ........ 256
Transcontinental Gas Pipe Line Corp. (G–13143), 21 FPC 399, set aside *sub nom.* F.P.C. *v.* Transcontinental Gas Pipe Line Corp., 271 F. 2d 942 (CA3–1959), *reversed* 365 U.S. 1 (1961) ........ 130
Transcontinental Gas Pipe Line Corp. (CP63–222), 33 FPC 237, *affirmed sub nom.* Public Service Electric and Gas Co. *v.* F.P.C., 371 F. 2d 1 (CA3–1967) ........ 435
Transcontinental Gas Pipe Line Corp. (CP63–228), 30 FPC 38 ........ 145
Transcontinental Gas Pipe Line Corp. (CP64–270), 35 FPC 917 ........ 848
Transwestern Pipeline Co. (CP63–204), 36 FPC 176 ........ 434, 931
Turnbull & Zoch Drilling Co. (Operator) (G–17960), 34 FPC 1001 ........ 1043
Udall *v.* Tallman, 380 U.S. 1 (1965) ........ 23
Union Oil Co. of California (CI65–683), 34 FPC 1505 ........ 1041
Union Texas Petroleum (G–13221), 29 FPC 273 ........ 335
Union Texas Petroleum (G–13221), 32 FPC 254 ........ 314, 440
United Fuel Gas Co. (G–2451), 16 FPC 711 ........ 188
United Fuel Gas Co. (G–20270), 31 FPC 1342 ........ 248
United Gas Improvement Co. *v.* Callery Properties, Inc., 382 U.S. 223 (1965) ........ 434, 969
United Gas Improvement Co. *v.* Continental Oil Co., 381 U.S. 392 (1965) ........ 454, 1200
United Gas Improvement Co. *v.* F.P.C., 283 F. 2d 817 (CA9–1960), cert. denied 365 U.S. 879 (1961) ........ 969
United Gas Pipe Line Co. (G–1142), 14 FPC 353 ........ 937
United Gas Pipe Line Co. (RP61–18), 33 FPC 837 ........ 101
United Gas Pipe Line Co. (RP63–1), 31 FPC 1180 ........ 215
United Gas Pipe Line Co. *v.* Miss. P.S.C., 133 So. 2d 521 (1961) ........ 938
U.S. *v.* Borden, 308 U.S. 188 (1939) ........ 26
U.S. *v.* Detroit & Cleveland Navigation Co., 326 U.S. 236 (1945) ........ 180
U.S. *v.* El Paso Natural Gas Co., 376 U.S. 651 (1964) ........ 130, 217
U.S. *v.* F.P.C., 345 U.S. 153 (1953) ........ 341
U.S. *v.* Jones, 100 F. 2d 65 (CA8–1938) ........ 44
U.S. *v.* Public Utilities Commission of California, 345 U.S. 295 (1953) ........ 32, 149, 571
U.S. *v.* Tynen, 11 Wall 88 (1870) ........ 36
U.S. *v.* Zacks, 375 U.S. 59 (1963) ........ 27
U.S. *ex rel.* Goodwin *v.* Karnuth, 74 F. Supp. 660 (1947) ........ 44
Vermont Gas Systems, Inc. (CP65–141), 33 FPC 142 ........ 961
Virginia Electric & Power Co. *v.* F.P.C., 351 F. 2d 408 (CA4–1965) ........ 342
Virginia Petroleum Jobbers Association *v.* F.P.C., 259 F. 2d 921 (CADC–1958) ........ 310
Waterbury Savings Bank *v.* Danaher, 20 A. 2d 455 (1941) ........ 34
Western Colorado Power Co. *v.* Public Utilities Commission of Colorado, 411 P. 2d 785, rehearing denied 411 P. 2d 805 ........ 68
Western Massachusetts Electric Co. (project 2334), 32 FPC 129 ........ 635
Westfall *v.* U.S., 274 U.S. 256 (1927) ........ 18
Wisconsin *v.* F.P.C., 303 F. 2d 380 (CADC–1961), *affirmed* 373 U.S. 294 (1963) ........ 249
Wisconsin Michigan Power Co. *v.* F.P.C., 197 F. 2d 472 (CA7–1952), cert. denied 345 U.S. 934 (1953) ........ 551
Wisconsin Public Service Corp. (project 1940), 5 FPC 548 ........ 624
Wood *v.* U.S. 16 Pet. 336 (1842) ........ 36

# TABLE OF STATUTES CITED

| | Page |
|---|---|
| **United States:** | |
| **Act of May 18, 1933, 48 Stat. 58:** | |
| Sec. 10 | 45 |
| Sec. 12 | 45 |
| **Administrative Procedure Act of 1946, 60 Stat. 237:** | |
| Sec. 2(c) | 637 |
| Sec. 4 | 637 |
| Sec. 5(b) | 250 |
| Sec. 7(c) | 334 |
| Sec. 1007(b) | 1008 |
| **Clayton Act, 38 Stat. 730 (1914), 15 U.S.C. 14 (1958):** | |
| Sec. 7 | 217 |
| **Communications Act of 1934, 48 Stat. 1064, 47 U.S.C. 214(d):** | |
| Sec. 214(a) | 1136 |
| **Federal Power Act, 49 Stat. 838 (1935), 16 U.S.C. 791 (1958):** | |
| Sec. 3(3) | 33 |
| Sec. 3(4) | 33 |
| Sec. 3(11) | 490, 622 |
| Sec. 3(13) | 1172 |
| Sec. 4 | 42, 330 |
| Sec. 4(b) | 762 |
| Sec. 4(e) | 73, 75, 118, 517, 578, 621, 760, 857, 979, 1206 |
| Sec. 4(f) | 1056 |
| Sec. 4(g) | 958 |
| Sec. 5 | 1057 |
| Sec. 6 | 762 |
| Sec. 7(b) | 1057 |
| Sec. 8 | 254, 1172 |
| Sec. 9 | 958 |
| Sec. 9(b) | 254 |
| Sec. 10 | 958 |
| Sec. 10(a) | 335, 637, 1177 |
| Sec. 10(c) | 762 |
| Sec. 10(d) | 623, 762, 862, 1174 |
| Sec. 10(e) | 350, 623, 1172 |
| Sec. 10(f) | 341, 762, 768 |
| Sec. 10(i) | 762 |
| Sec. 11 | 762 |
| Sec. 12 | 762 |
| Sec. 14 | 761, 861 |
| Sec. 15 | 761, 861 |
| Sec. 17 | 353 |
| Sec. 19 | 762 |
| Sec. 20 | 762 |
| Sec. 22 | 762 |
| Sec. 23(a) | 762 |
| Sec. 23(b) | 623 |
| Sec. 24 | 234, 537, 541 |
| Sec. 201 | 68, 546, 833, 851, 1105 |
| Sec. 201(b) | 31, 547 |
| Sec. 201(c) | 33, 564 |
| Sec. 201(e) | 29 |
| Sec. 201(f) | 17 |
| Sec. 202 | 27, 559, 851, 1105 |
| Sec. 202(a) | 337 |
| Sec. 202(b) | 21, 214, 296, 546, 1103, 1136 |

- United States—Continued
  - Federal Power Act—Continued (Page)
    - Sec. 202(c) 69, 495
    - Sec. 203 27, 239, 271, 287, 297, 574, 603, 704, 714, 749, 853, 987, 991, 1051, 1059, 1117, 1176
    - Sec. 203(a) 21
    - Sec. 204 27, 94, 277, 300, 527, 733, 735, 824, 827, 894, 955, 1000, 1018, 1094, 1118
    - Sec. 204(a) 278, 527, 734, 736, 1095
    - Sec. 204(e) 277, 527, 734, 736, 1095
    - Sec. 204(f) 95, 278, 301, 527, 734, 736, 826, 956, 1001, 1095, 1120
    - Sec. 205 22, 296, 607, 614, 851, 928, 1105
    - Sec. 205(d) 516, 609
    - Sec. 206 22, 296, 851, 928, 1105
    - Sec. 206(a) 514
    - Sec. 207 296, 851
    - Sec. 208 851
    - Sec. 209 851
    - Sec. 301 22
    - Sec. 302 22
    - Sec. 305 27
    - Sec. 305(b) 22
    - Sec. 307 1105
    - Sec. 308 958, 1105
    - Sec. 309 958, 1105
    - Sec. 311 24, 554
    - Sec. 313(a) 74, 78, 91, 254, 255, 397, 491, 522, 582, 607, 760, 763, 786, 789, 833, 873, 890, 905, 983, 1058, 1209
    - Sec. 318 1061
  - Federal Railroad Control Act:
    - Sec. 10 36
  - Federal Water Power Act of 1920, 41 Stat. 1063:
    - Sec. 3 640, 1172
    - Sec. 10(e) 1172
  - Flood Control Act of 1944, 58 Stat. 887, 16 U.S.C. 825s:
    - Sec. 5 349
  - Helium Act, 74 Stat. 918, 50 U.S.C. 167i 708
  - Interstate Commerce Act, 41 Stat. 494, 49 U.S.C.:
    - Sec. 1(21) 1136
  - National Labor Relations Act, 49 Stat. 450, 29 U.S.C. 160(c):
    - Sec. 10(c) 43
  - Natural Gas Act, 52 Stat. 821 (1938), 15 U.S.C. 717 (1958):
    - Sec. 1(a) 1150
    - Sec. 1(b) 433, 1129
    - Sec. 1(c) 210, 726, 866
    - Sec. 2 1154
    - Sec. 2(1) 1091
    - Sec. 2(6) 708, 1063, 1197
    - Sec. 3 777, 820, 1091
    - Sec. 4 249, 402, 436, 708, 731, 928, 948, 973, 1198, 1201
    - Sec. 4(b) 444
    - Sec. 4(d) 475
    - Sec. 4(e) 282, 402, 804, 1010, 1043, 1136
    - Sec. 5 249, 402, 436, 708, 928, 1150, 1198, 1201
    - Sec. 5(a) 101, 268, 325, 402, 444, 692, 925, 1136
    - Sec. 5(b) 1150
    - Sec. 7 119, 259, 425, 510, 522, 600, 616, 677, 708, 741, 803, 805, 845, 921, 963, 1011, 1073, 1150, 1183, 1196, 1201
    - Sec. 7(a) 1, 50, 80, 210, 262, 285, 311, 480, 501, 524, 615, 703, 722, 754, 757, 792, 811, 831, 841, 880, 883, 884, 886, 944, 1002, 1099, 1111, 1115, 1129

United States—Continued
  Natural Gas Act—Continued
Page
    Sec. 7(b) ........ 11, 156, 258, 259, 419, 423, 488, 502, 523, 536, 541, 576, 583, 618, 728, 743, 773, 803, 806, 817, 818, 836, 843, 845, 881, 948, 973, 984, 995, 1012, 1012, 1014, 1016, 1031, 1033, 1048, 1061, 1183, 1186
    Sec. 7(c) ........ 2, 4, 6, 11, 47, 49, 70, 83, 85, 87, 92, 96, 107, 114, 133, 221, 230, 231, 236, 237, 241, 242, 256, 264, 266, 273, 275, 279, 298, 303, 304, 308, 312, 318, 320, 321, 323, 421, 442, 479, 482, 483, 485, 486, 498, 499, 503, 505, 523, 530, 532, 539, 541, 576, 585, 593, 601, 617, 647, 718, 719, 725, 742, 743, 745, 746, 764, 766, 771, 773, 780, 791, 797, 799, 802, 804, 818, 831, 834, 840, 855, 868, 874, 875, 881, 890, 905, 907, 910, 913, 915, 917, 926, 947, 951, 959, 963, 984, 989, 995, 997, 998, 1003, 1008, 1010, 1012, 1014, 1020, 1023, 1028, 1034, 1044, 1046, 1053, 1055, 1061, 1091, 1096, 1098, 1109, 1110, 1112, 1114, 1129, 1179, 1183, 1188, 1189, 1191, 1193
    Sec. 7(e) ........ 3, 5, 6, 11, 48, 50, 71, 83, 85, 87, 93, 97, 108, 115, 133, 230, 233, 236, 237, 241, 243, 265, 267, 274, 276, 280, 299, 305, 309, 313, 319, 321, 322, 323, 422, 434, 480, 482, 484, 486, 487, 498, 500, 504, 506, 523, 531, 532, 543, 577, 586, 602, 617, 648, 718, 720, 727, 742, 744, 746, 747, 765, 766, 772, 774, 781, 792, 798, 800, 802, 804, 819, 835, 840, 856, 869, 874, 876, 882, 891, 906, 908, 910, 914, 916, 918, 926, 947, 950, 952, 961, 969, 985, 990, 996, 997, 999, 1004, 1009, 1010, 1013, 1015, 1022, 1023, 1031, 1035, 1045, 1046, 1054, 1056, 1062, 1091, 1097, 1099, 1109, 1111, 1113, 1114, 1180, 1184, 1188, 1190, 1192, 1194
    Sec. 7(f) ........ 503, 1135
    Sec. 7(g) ........ 217, 600, 1141
    Sec. 8 ........ 1069
    Sec. 9 ........ 1069
    Sec. 10 ........ 402, 1069
    Sec. 14 ........ 402, 708, 1069
    Sec. 15 ........ 402, 708, 731, 1069
    Sec. 16 ........ 256, 402, 708, 1069, 1198, 1201
    Sec. 19(a) ........ 255, 807
    Sec. 20 ........ 1170
    Sec. 21 ........ 1170
  Public Law 89-605, 80 Stat. 847:
    Sec. 1 ........ 106
    Sec. 5 ........ 106
  Public Law 688, 52 Stat. 825 (1938) ........ 1152
  Public Utility Holding Company Act of 1935, 49 Stat. 803 ........ 15, 1061
  Rural Electrification Act of 1936:
    Sec. 3(a) ........ 20
    Sec. 4 ........ 21
  Wheeler-Rayburn Act of 1935 ........ 1149
States:
  Nebraska Revised Statutes:
    Sec. 70-1017 ........ 331
Canada, Revised Statutes of, Sec. 3, Chap. 60 ........ 1085

# TABLE OF RULES OF COMMISSION CITED*

Page

Sec. 1.8 240, 272, 289, 403, 575, 705, 709, 715, 731, 850, 852, 854, 958, 1052, 1095
Sec. 1.8(b) 960
Sec. 1.8(d) 331
Sec. 1.9(c) 1069
Sec. 1.10 240, 272, 289, 575, 598, 705, 715, 850, 854, 1052, 1095
Sec. 1.11(d)(2) 297, 614
Sec. 1.12 105, 591
Sec. 1.12(c) 397
Sec. 1.15 958
Sec. 1.15(f) 516
Sec. 1.16 958
Sec. 1.17 958
Sec. 1.18 598, 709, 850
Sec. 1.18(e) 398, 534, 806, 809, 876
Sec. 1.26(3)(ii) 1142
Sec. 1.30(c)(3) 397
Sec. 1.31(a) 66
Sec. 1.31(b)(2) 66
Sec. 1.31(b)(3) 66
Sec. 1.37 852, 958
Sec. 1.37(f) 709, 731
Sec. 2.55(c) 1170
Sec. 2.58(a) 586
Sec. 2.58(a)(2) 915
Sec. 3.5(d) 403
Sec. 4.40(i) 902
Sec. 4.41 518, 763, 1058
Sec. 4.41(1)(i) 521
Sec. 4.41(1)(iii) 521
Sec. 4.41(1)(v) 521
Sec. 4.42 788
Sec. 4.50 761
Sec. 11.20 519
Sec. 11.20(a) 518
Sec. 11.20(a)(4) 521, 1209
Sec. 34.1a 278, 301, 528, 734, 736, 1095
Sec. 34.1a(a)(1) 301
Sec. 34.1a(a)(2) 278, 528, 734, 736, 1095
Sec. 34.1a(a)(3) 1018
Sec. 34.1a(b) 1019
Sec. 34.1a(c) 1019
Sec. 34.2(g) 96, 261, 826, 909, 943, 957, 1001, 1026, 1039, 1121
Sec. 34.2(h) 957, 1002, 1039
Sec. 34.2(h)(1) 96, 261, 826, 909, 943, 1026, 1121
Sec. 34.9 96, 261, 826, 909, 943, 957, 1002, 1027, 1039, 1121
Sec. 35 68, 495, 609, 929
Sec. 35.3 516, 609
Sec. 120.3 556, 834
Sec. 153.8 778
Sec. 154 102, 251, 305, 497, 529, 536, 712, 744, 810, 877, 948, 973, 1032

---

*The Commission's Rules and Regulations are contained in Title 18, Chapter I, of the Code of Federal Regulations.

Page
Sec. 154.22 82, 313, 445, 593, 753
Sec. 154.63(e)(2) 475
Sec. 154.91(a) 971
Sec. 154.91(e) 708, 745
Sec. 154.104 803, 805, 1011
Sec. 155.1 746
Sec. 156.1 1154
Sec. 157 803, 805, 948, 973, 1011
Sec. 157.7 4, 70, 83, 85, 114, 230, 231, 237, 273, 279, 419, 532, 585, 766, 771, 840, 868, 913, 915, 942, 997, 1007, 1023, 1034, 1046, 1053, 1109, 1115, 1193
Sec. 157.10 850
Sec. 157.14(a)(11) 795
Sec. 157.17 933
Sec. 157.20 3, 5, 7, 12, 48, 50, 71, 82, 84, 86, 88, 93, 97, 108, 115, 135, 231, 233, 236, 238, 242, 243, 264, 265, 267, 274, 276, 280, 300, 305, 309, 313, 319, 321, 322, 324, 422, 448, 480, 483, 484, 486, 487, 499, 500, 504, 506, 523, 531, 533, 544, 577, 586, 590, 596, 603, 617, 620, 649, 700, 719, 720, 727, 740, 742, 744, 746, 747, 748, 765, 767, 772, 774, 782, 791, 793, 798, 800, 820, 836, 841, 856, 869, 875, 876, 882, 892, 906, 908, 911, 914, 916, 918, 926, 948, 951, 952, 961, 977, 986, 990, 996, 997, 999, 1005, 1009, 1013, 1015, 1020, 1022, 1024, 1031, 1035, 1045, 1047, 1050, 1054, 1056, 1063, 1093, 1097, 1099, 1110, 1112, 1113, 1115, 1145, 1180, 1189, 1190, 1192, 1194
Sec. 157.40(a)(3) 803, 805, 1011
Sec. 157.40(b)(1) 803, 805, 1011
Sec. 158.1 1063

# TABLE OF MISCELLANEOUS CITATIONS

Page
8 Am Jur 2d, *Bailments*, §40 (1963) 437
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1 Davis, *Administrative Law Treastise*, §8.04 at p. 525 (1958) 1139
Congressional Record:
  Vol. 80, pp. 3308, 3313, 5277, 5281, 5288, 5293, 5308, 5312 (1936) 19, 20
  Vol. 81, p. 6724 (1937) 1152
  Vol. 92, pp. 1801, 1809 (1946) 22
Executive Order No. 7037, May 11, 1935 46
Executive Order No. 10485, September 3, 1953 777, 820, 1092
Executive Order of President Roosevelt, August 7, 1935, Prescribing Rules and Regulations Relating to Approved Projects Administered by the Rural Electrification Administration under the Emergency Relief Appropriation Act of 1935—Regulation No. 4 25
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Federal Power Commission Order No. 284, 32 FPC 422 (1964) 1029
Federal Power Commission Order No. 308, 34 FPC 1202 (1965) 1042
Federal Power Commission Order No. 313, 34 FPC 1546 (1965) 10, 67, 518, 581, 783
Federal Power Commission Order No. 314, 34 FPC 1550 (1965) 518
Federal Power Commission Order No. 334, 37 FPC 110 (1967) 973
Federal Power Commission Order No. 334–A, 37 FPC 587 (1967) 973
Federal Power Commission Order No. 336, 37 FPC 295 (1967) 459
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United States House of Representatives: Page
- Hearings, Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 1st Sess., pp. 392, 533 (1935) 16, 1136
- Hearings, Committee on Interstate and Foreign Commerce on H.R. 4008, 75th Cong., 1st Sess., pp. 881–84 (1937) 1152
- Hearings, Committee on Interstate and Foreign Commerce on H.R. 5249, 77th Cong., 1st Sess., pp. 23–24 (1941) 1152
- Hearings, before the Subcommittee of the House Committee on Interstate and Foreign Commerce on H.R. 11662, 74th Cong., 2nd Sess., p. 37 (1936) 1136
- House Report No. 1290, 77th Cong., 1st Sess., p. 203 (1941) 462
- House Report No. 1318, 74th Cong., 1st Sess., p. 27 (1935) 46, 559
- House Report No. 1917, 89th Cong., 2d Sess., p. 7 (1966) 106
- H.R. 13058
  - Sec. 6 106

United States Senate:
- Hearings, Committee on Interstate and Foreign Commerce on S. 3483, a Bill to Provide for Rural Electrification and for Other Purposes, 74th Cong., 2nd Sess., p. 51 (1936) 20
- Senate Report No 621 on S. 2796, 74th Cong., 1st Sess., p. 49 (1935) 559
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Washington Evening Star, August 25, 1966, "Underground Gas Storage for this Area Nearing Reality" 189

# FOREWORD

The Federal Power Act was originally enacted as the Federal Water Power Act, approved June 10, 1920 (41 Stat. 1063, 16 U.S.C. 791–823). The Federal Power Commission was reorganized January 1, 1931, as an independent Commission under the act approved June 23, 1930 (46 Stat. 797). By title II of the Public Utility Act of 1935, approved August 26, 1935 (49 Stat. 838), the original Federal Water Power Act was made part I of the "Federal Power Act" and parts II and III were added. The Federal Power Act was amended May 28, 1948 (62 Stat. 275), August 7, 1953 (67 Stat. 461), August 15, 1953 (67 Stat. 587), June 4, 1956 (70 Stat. 226), and August 28, 1958 (72 Stat. 941 at 947). The Commission also administers the Natural Gas Act, approved June 21, 1938 (52 Stat. 821, 15 U.S.C. 717–717w), as amended February 7, 1942 (56 Stat. 83, 15 U.S.C. 717f), July 25, 1947 (61 Stat. 459, 15 U.S.C. 717f), March 27, 1954 (68 Stat. 36, 15 U.S.C. 717(c)), and August 28, 1958 (72 Stat. 941 at 947; 15 U.S.C. 717r), and has certain duties under the Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 1075), and amendments thereto; the Bonneville Act, approved August 20, 1937 (50 Stat. 731); the Fort Peck Act, approved May 18, 1938 (52 Stat. 403); and under various Flood Control and River and Harbor Acts (notably the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887)), and other statutes, as well as Executive Orders.

This volume, the thirty-seventh of a series, contains all the formal opinions and accompanying orders of the Federal Power Commission rendered January 1, 1967 to June 30, 1967, inclusive. In addition to the formal opinions, there have been included intermediate decisions which have become final and selected orders of the Commission issued during such period.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITY OF CREAL SPRINGS, ILLINOIS AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP67-121

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 3, 1967)

On November 1, 1966, the City of Creal Springs, Illinois (Applicant) filed in Docket No. CP67-121 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 609 Mcf of natural gas per day for resale and distribution in the community of Creal Springs, Williamson County, Illinois, and environs, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate approximately 2.35 miles of 3-inch lateral pipeline extending in a southeasterly direction from a point of interconnection with Respondent's 24-inch transmission line to the City of Creal Springs and a distribution system in said city.

Applicant's total estimated annual and peak day natural gas requirements in the third year of proposed operations are 61,600 and 609 Mcf, respectively. All volumes stated are at a measurement pressure base of 14.73 psia.

The total estimated cost of Applicant's proposed facilities is $152,700, which cost will be financed through the issuance of natural gas mortgage revenue bonds.

On December 7, 1966, Respondent filed its answer to the instant application, stating that it will abide by whatever decision the Commission may make on the merits of the application.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

*The Commission finds:*

(1) Respondent, Texas Eastern Transmission Corporation, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued on March 30, 1949, in Docket No. G-1089.

(2) Applicant, City of Creal Springs, Illinois, is a municipal corporation incorporated under the laws of the State of Illinois and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said town.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 609 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 609 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP67–102

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1967)

On October 19, 1966, El Paso Natural Gas Company (Applicant) filed in Docket No. CP67–102 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to be used for direct and resale sales of natural gas, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to construct and operate approximately 17.93 miles of 8⅝-inch O.D. pipeline looping a portion of its San Manuel-Hayden, Arizona, pipeline and to modify its existing measuring and regulating stations serving American Smelting & Refining Company (AS&R) and Kennecott Copper Corporation (Kennecott) by adding one 6⅝-inch O.D. orifice-type meter run to each station. Applicant proposes to enter into Gas Sales Agreements with AS&R and Kennecott to increase the firm daily deliveries of natural gas by Applicant to such customers by 2,023 Mcf and 708 Mcf, respectively. The above-mentioned facilities are proposed to implement the increases of direct deliveries to AS&R and Kennecott near Hayden, Gila County, Arizona.

Applicant is presently selling and delivering natural gas to Arizona Public Service Company (Public Service) for resale and distribution in the community of Ehrenberg, Yuma County, Arizona, through a mainline tap located on its 26-inch O.D. California mainline. Public Service proposes to expand its present distribution system to serve additional consumers situated in its Ehrenberg service area. The estimated annual and maximum daily natural gas requirements of Public Service during the third full year of proposed service are 12,553 Mcf and 231 Mcf, respectively. To provide for more efficient control over the volumes of gas sold and delivered to Public Service, Applicant proposes to convert the foregoing mainline tap to a measuring and regulating station.

Southwest Gas Corporation (Southwest Gas) proposes to initiate natural gas service to consumers situated in the community of Sacaton, and other areas, within the Gila River Indian Reservation, Pinal County, Arizona, and to construct transmission and distribution facilities necessary therefore. The estimated annual and maximum daily natural gas requirements of Southwest Gas to provide service in such area during the third full year of proposed operations are 22,460 Mcf and 190 Mcf, respectively. In order to implement such service, Applicant proposes to construct and operate a measuring and regulating station adjacent to its 10¾-inch O.D. Phoenix pipeline located in Pinal County, Arizona.

The sale and delivery of natural gas by Applicant to Public Service and Southwest Gas will be made in accordance with and at rates contained in Applicant's Rate Schedules A-1 and B-1, FPC Gas Tariff, Original Volume No. 1.

The total estimated cost of Applicant's proposed facilities is $469,854, inclusive of filing fees, which cost will be financed through the use of working funds.

After due notice, no protest, petition to intervene, or notice of intervention has been filed herein.

At a hearing held on December 29, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The certificate hereinafter issued should be conditioned upon Applicant's filing with the Commission appropriate revised service agreements with the Arizona Public Service Company and with the Southwest Gas Corporation in accordance with the Commission's Regulations under the Natural Gas Act.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to El Paso Natural Gas Company authorizing the construction and operation of the facilities and the transportation and sale of natural gas as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within one year from the date of this order.

(D) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any further increases in their requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) The certificate issued by paragraph (A) above is conditioned upon Applicant's filing with the Commission appropriate revised service agreements with the Arizona Public Service Company and with the Southwest Gas Corporation in accordance with the Commission's Regulations under the Natural Gas Act.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP67-117

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1967)

On October 31, 1966, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), filed in Docket No. CP67-117 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 of certain gas-purchase facilities, all as more fully set forth in the application.

Applicant requests authorization to construct and operate routine pipeline, measuring, and compressor facilities in the various natural gas supply areas adjacent to Applicant's gathering and transmission facilities in order to connect to Applicant's system such additional supplies of gas as may become available.

The total estimated cost of construction of the various facilities is $800,000, with no one project costing more than $200,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 29, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $800,000 with no single project to exceed a cost of $200,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to construct during the calendar year 1967 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $800,000 with no single project to exceed a cost of $200,000.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-126

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1967)

On November 4, 1966, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-126 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of additional contract demand to two of its existing utility customers and the revision and initiation of firm natural gas service for five existing industrial consumers, all as more fully set forth in the application.

Wisconsin Southern Gas Company, Inc., has requested 200 Mcf of contract demand for firm service to an existing industrial customer, Minnesota Mining and Manufacturing Company, at Prairie du Chien, Wisconsin, for drying oven requirements.

Peoples Division of Applicant (Peoples) has requested an increase of 1000 Mcf of contract demand to satisfy requests for firm service to two existing industrial customers, the John Deere Tractor Works at Dubuque, Iowa, which will utilize the gas for processing, and the Rockford Brick and Tile Company, Rockford, Iowa, which will utilize the gas for kiln drying. Peoples also requests termination of 550 Mcf of contract demand authorized for Clinton Engines Corporation, Maquoketa, Iowa. The net increase in deliveries to Peoples will be 450 Mcf of contract demand.

Northern States Power Company has requested that 1,100 Mcf per day of its present contract demand be reserved for firm industrial service to the Ford Motor Company at St. Paul, Minnesota, for space heating.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 29, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The proposed sale of additional volumes of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale of additional volumes of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant to transport and sell the additional contract demand volumes requested by Applicant's distributor customers, and to transport and deliver to such distributor customers the specified volumes of firm gas for the four industrial customers.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The sales authorized by paragraph (A) above shall be commenced as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) Applicant is authorized to terminate the transportation and delivery of 550 Mcf of natural gas to Peoples for sale and delivery to Clinton Engines Corporation.

(E) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(F) Applicant shall notify the Commission of the date of commencement of service within 10 days of that date, and make appropriate rate filings as required by the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NOS. RP61-18, RP63-1, RP65-1; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP65-54; SOUTHERN NATURAL GAS COMPANY, DOCKET NO. RP65-55; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. RP65-56; TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. RP65-57

### ORDER RELEASING REFUNDS IN PART

(Issued January 4, 1967)

On December 23, 1964, the Commission issued an order, 32 FPC 1515, approving a rate settlement in the United Gas Pipe Line Company (United) dockets listed above. That order also directed United to retain, pending further Commission order, all amounts refundable to its customers, and provided for certain procedures and the filing of reports to aid us in the disposition of the retained amounts.

By order issued in the same dockets on April 21, 1965, 33 FPC 837, we authorized United and its escrow agent to release those portions of the retained refunds due to Mississippi River Fuel Corporation, Mississippi River Transmission Company, and certain distributor customers of United listed in Appendix A to United's Stipulation.[1] At the same time, we required Natural Gas Pipeline Company of America (Natural), Southern Natural Gas Company (Southern), Tennessee Gas Transmission Company (Tennessee),[2] and Texas Gas Transmission Corporation (Texas Gas) to file reports of their respective intentions regarding disposition of refund amounts due from their suppliers. Our analysis of the reports submitted indicates that a partial release of refunds presently being retained by United is appropriate.

Natural has agreed to flow through to its jurisdictional customers $168,895 of the $169,210[3] due to it from United. The balance of $315 is allocable to non-jurisdictional sales, and will be retained by Natural. It is proper, therefore, that we authorize United to release the full refund of $169,210 due to Natural.

United is presently retaining $2,661,504 due to Southern. Of this amount, Southern would retain $890,361, as specifically provided in Opinion No. 379 (issued February 18, 1963, 29 FPC 323), as amended by Opinion No. 379–A (issued April 19, 1963, 29 FPC 779), and would flow through to its jurisdictional customers $1,771,143. This plan is in accordance with Southern's established flow-through obligations, and we are therefore authorizing United to release to Southern $2,661,504.

Southern has three wholesale customers subject to the Commission's jurisdiction: South Georgia Natural Gas Company, Florida Gas Transmission Company, and Texas Eastern Transmission Corporation. Of the three, only South Georgia Natural Gas Company has an established obligation to flow through to its customers the jurisdictional portions of the refund from Southern. Accordingly, of the $2,661,504 which we are authorizing United to pass on to Southern, we are directing Southern to retain, pending further Commission order, $14,936, due to Florida Gas Transmission Company, and $44,722 due to Texas Eastern Transmission Corporation, together with applicable net escrow earnings.

Tennessee has indicated its intention to retain the full refund of $142,604 due to it from United. Tennessee in its report states that the amount of $142,604 due from United is attributable to a transportation contract, not a purchase of gas, and that its settlement agreement[4] does not require it to flow through any refunds attributable to this transaction. We agree with Tennessee's contentions and, accordingly, we are authorizing United to release the full refund of $142,604 due to Tennessee.

United is presently retaining $1,110,995 allocable to Texas Gas.[5] Texas Gas has stated its intention to pass on the entire $1,054,607 allocable to its jurisdictional customers, except for $452 attributable to an emergency sale to Florida Gas Transmission Company. Texas Gas intends to retain $56,388 applicable to direct sales. This plan is in accordance with its settlement agreement, and we are therefore directing United to release to Texas Gas that portion of its refund of $1,110,995 which is not attributable to United's refund from Humble.

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[1] The April 21, 1965, order was explicitly made inapplicable to any amounts received by United or any of its customers from Humble Oil & Refining Company (Humble) pursuant to its rate settlement in Docket No. G–9287 (approved by our order of July 8, 1964, 32 FPC 49). In the absence of a specific indication to the contrary, the refund amounts set forth in this order, similarly, do not include refunds from Humble.

[2] Now Tennessee Gas Pipeline Company, a division of Tenneco Inc.

[3] The figures set forth in this discussion represent principal and interest amounts only. As the ordering paragraphs below indicate, however, we contemplate that all payments released by this order shall include applicable net escrow earnings.

[4] *Tennessee Gas Transmission Company,* Docket No. G–11980, *et al.,* December 21, 1962, 28 FPC 1100.

[5] This amount includes refunds from Humble Oil & Refining Company. Texas Gas, in preparing its statement of intended disposition, was unable to segregate the Humble portion.

Because the flow-through obligations of three customers of Texas Gas (Michigan Wisconsin Pipe Line Company, The Ohio Fuel Gas Company, and Texas Eastern Transmission Corporation) appear to be in question, we are directing Texas Gas to retain, pending further Commission order, $486,135 allocable to these companies.

*The Commission orders:*

(A) United and its duly appointed escrow agent are authorized to release and pay over to Natural Gas Pipeline Company of America, Southern Natural Gas Company, Tennessee Gas Transmission Company, and Texas Gas Transmission Corporation, within 45 days from the date of this order, the amounts shown to be refundable to those companies, respectively, in Appendix A of United's Stipulation and Agreement of December 16, 1964 (approved by our order of December 23, 1964, 32 FPC 1515), together with net escrow earnings, less any portions thereof attributable to United's receipt of refunds from Humble Oil & Refining Company.

(B) Within 60 days from the date of this order, United shall submit a report showing the amount received by each customer named in paragraph (A) above. The allocable portion of the earnings of the escrow account shall be shown separately with respect to each customer.

(C) Except as specifically ordered in paragraphs (D) and (E) below, each company receiving refunds pursuant to paragraph (A) above shall flow through such refunds in accordance with applicable Commission orders and settlement agreements. Companies which flow through amounts received pursuant to this order shall submit a report showing the details of their refund within 15 days after the refund is made, or within the time specified in the applicable order or settlement, whichever is later.

(D) Southern Natural Gas Company shall, pending further Commission order, retain and defer the flow-through of those portions of its refund from United, received pursuant to paragraph (A) above, attributable to purchases by Florida Gas Transmission Company and Texas Eastern Transmission Corporation.

(E) Texas Gas Transmission Corporation shall, pending further Commission order, retain and defer the flow-through of those portions of its refund from United, received pursuant to paragraph (A) above, attributable to purchases by Michigan Wisconsin Pipe Line Company, The Ohio Fuel Gas Company, and Texas Eastern Transmission Corporation.

(F) The amounts ordered to be retained pursuant to paragraphs (D) and (E) above shall be retained in accordance with the methods set forth in paragraph (J) of the Commission's order issued April 21, 1965, in *Humble Oil & Refining Company*, Docket Nos. G-9287 and G-9288, *et al.*, 33 FPC 830. Within 30 days after the receipt of such refunds pursuant to this order, Southern and Texas Gas shall each submit a report showing the amounts to be retained in accordance with this paragraph and the manner in which such amounts will be retained, and shall serve such report on their respective customers.

(G) Any party which, but for the retention provisions of paragraphs (D) and (E) above, would have received amounts from Southern or Texas Gas, and which is presently obligated to pass on such amounts by prior order of the Commission, or will voluntarily assume the obligation to pass on such amounts, shall submit, within 20 days from the date of this order, a report setting forth the details of such obligation or an agreement assuming the obligation to pass on the refund.

(H) Pending further order of the Commission, United and its escrow agent shall retain all remaining refundable amounts in accordance with paragraphs (H) and (I) of Opinion No. 428–A entered in Docket No. RP63–1 on September 2, 1964, 32 FPC 687.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## YADKIN, INC., PROJECT NO. 2197

### ORDER AUTHORIZING EASEMENT IN PROJECT LAND

(Issued January 4, 1967)

Application was filed on October 10, 1966, by Yadkin, Inc., the licensee for Project No. 2197, seeking Commission permission to grant an easement to the Town of Denton, North Carolina, in a portion of project land.

The Licensee proposes to grant to the Town of Denton an easement in approximately 1.2 acres of project land for a water intake pipe, a pumping station, a sixteen-inch water main, and a power transmission line to provide power for the pumping station, in order that water may be taken from Licensee's Tuckertown Reservoir for use by the Town to replace its existing water supply obtained from ground wells for domestic, and commercial use. Licensee would grant an easement to the Town in the project land for the installation and operation of the above facilities. The easement would be subject to the rights and responsibilities of Licensee and its successors for Project No. 2197 and the requirements of Commission Order No. 313, issued December 27, 1965, (18 CFR 2.7(C)), 34 FPC 1546.

The Town of Denton has advised that it will initially take some 250,000 gallons per day from the reservoir and except for normal losses it will return this water to the reservoir after treatment in its sewage plant which will be built concurrently with the new water supply facilities.

*The Commission finds:*

It is necessary and appropriate for the purposes of the Federal Power Act to authorize the granting of the easement of right-of-way over project lands as described in the recital above upon the terms and conditions as hereinafter provided.

*The Commission orders:*

(A) Yadkin, Inc. is hereby authorized to grant the aforementioned easement to the Town of Denton, North Carolina, subject to the retention in any instrument granting such easement of the rights and responsibilities of the licensee and its successors and assigns for project purposes for Project No. 2197, and to a further condition that Yadkin, Inc. incorporate in any such easement a covenant or condition ensuring that the use of such lands will not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use in accordance with paragraph (C) of the Commission's Order No. 313, issued December 27, 1965 (18 CFR 2.7(C)).

(B) The Licensee shall file copies of the easement referred to in paragraph (A) above, with the Commission within 30 days of the date of its execution, accompanied by a print of the appropriate Exhibit K map marked to show accurately the extent and location of the land included in the easement.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP67-128

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 5, 1967)

On November 7, 1966, Algonquin Gas Transmission Company (Applicant) filed in Docket No. CP67-128 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon in place 0.67 mile of its 26-inch lateral pipeline J-1 in Lexington and Arlington, Massachusetts, and for a certificate of public convenience and necessity authorizing the construction and operation of 0.72 mile of 30-inch lateral pipeline to serve as a replacement for pipeline J-1, all as more fully set forth in the application.

The Massachusetts Department of Public Works has notified Applicant that a portion of Massachusetts State Route 2 in Lexington and Arlington, Massachusetts, is scheduled to be regraded, widened, and improved commencing in the summer of 1967. Applicant's lateral pipeline in this area is in the existing right-of-way on a revocable permit and will conflict with the proposed highway construction. Accordingly, Applicant deems it necessary to replace the 0.67 mile of existing lateral pipeline involved with approximately 0.72 mile of lateral pipeline in the immediate area.

The estimated overall capital cost of Applicant's proposed project is $305,500, which cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest has been filed herein.

At a hearing held on December 29, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Algonquin Gas Transmission Company, a Delaware corporation having its principal place of business in Boston, Massachusetts, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of February 26, 1951, in Docket No. G-1319 (10 FPC 35).

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities to be abandoned, as hereinbefore described, and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(7) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Algonquin Gas Transmission Company, authorizing the construction and operation of facilities as hereinbefore described, and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date of this order.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.

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## OPINION NO. 511

## DAIRYLAND POWER COOPERATIVE, MINNKOTA POWER COOPERATIVE, INC., SOUTH CENTRAL RURAL ELECTRIC COOPERATIVE, INC., DOCKET NO. E-7113

### OPINION AND ORDER WAIVING INTERMEDIATE DECISION AND DISMISSING PROCEEDINGS

(Issued January 5, 1967)

*Syllabus*

1. Congress never intended Commission to regulate cooperatives under the Federal Power Act—this intention is reflected in legislative history of Power Act; confirmed by that of Rural Electrification Act; strengthened by subsequent expressions by Congress; and ratified by Commission's legislative interpretation. P. 15.
2. Cooperatives financed by REA are not public utilities within meaning of Part II of Federal Power Act. P. 15.
3. Public Utility Holding Company Act of 1935 was designed to prevent notorious investment and profit abuses which developed in the industry under the domination of the holding companies. P. 15.
4. Reviewing legislative history of Power Act, Commission *concludes* that Section 201(f), exempting instrumentalities of the United States, includes cooperative respondents since they are instrumentalities chosen by Congress

for purpose of bringing abundant, low cost electric energy to rural America. PP. 16–18.

5. Concept has always been recognized that privately owned cooperatives can become instrumentalities of federal government when they are chosen as means by which a federal purpose is effectuated. P. 18.
6. Rural Electrification Act, enacted shortly after Federal Power Act, demonstrates that same Congress intended any federal controls over entities established to implement provisions of REA should be exercised solely by Administrator under that Act. P. 19.
7. Even in absence of legislation, Congress assumed that REA, as previously established by Executive Order, had power to control rates. P. 20.
8. Where Congress intends one agency of the federal government to review the performance of another, it normally says so. P. 21.
9. Since passage of Rural Electrification Act, Congress has steadfastly adhered to view that cooperatives are not covered by Federal Power Act and refused on every occasion to extend latter Act to include cooperatives. P. 22.
10. Interpretations of subsequent Congresses are not equivalent to the intention of the Congress enacting the bill. P. 23.
11. Administrative interpretation of a legislative mandate constitutes an especially persuasive factor in legislative interpretation. P. 23.
12. Upon analysis of administrative history regarding question of jurisdiction over cooperatives, Commission notes it is significant that in 30 years since enactment of Part II of Power Act, there has not been a single instance where it decided cooperatives are jurisdictional. PP. 24, 25.
13. It is a well-established principle that repeal of a statute by implication is not favored. P. 26.
14. While not of the opinion that Respondents here are subject to its jurisdiction under the Power Act, Commission makes clear that jurisdiction over major generating and transmission cooperatives in interstate commerce, as opposed to those merely transmitting and distributing electric energy [including those generating small amounts of power] would be in the public interest. PP. 27, 28.
15. Upon order to show cause, Commission *concludes* that Rural Electric Cooperatives are not subject to regulation under the Federal Power Act and *dismisses* proceedings.

Chairman White *concurring.*

Commissioner Bagge *concurring in part; dissenting in part.*

*Floyd E. Wheeler* for Dairyland Power Cooperative and Dairyland Member Cooperatives.

*Einar Johnson, Loren L. Johnson, Reuben Goldberg* and *George Spiegel* for Minnkota Power Cooperative, Inc.

*Robert P. Mone* and *David A. Johnston* for South Central Rural Electric Cooperative, Inc.

*Louis Gorrin, Ralph F. Koebel, Norman L. Plotka* and *Henry E. Freedman* for Orville L. Freeman, Secretary of Agriculture.

*Drexel D. Journey, John S. Everett, Jr.* and *Michael N. Mervin* for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A Carver, Jr.

Ross, *Commissioner:*

This proceeding commenced on July 22, 1963, when we issued an order directing Dairyland Power Cooperative of La Crosse, Wisconsin (Dairyland), Minnkota Power Cooperative, Inc. of Grand Forks, North Dakota (Minnkota), and South Central Rural Electric Cooperative, Inc. of Lancaster, Ohio (South Central) to show cause why they should not be required to comply with this Commission's reporting, accounting and rate schedule filing requirements. The important issue in the proceeding is whether rural electric cooperatives are subject to regulation by this Commission under the Federal Power Act.

Pursuant to our order, a hearing was held in December of 1963. Briefs were filed by the three respondents, by a Committee of Rural Electric Cooperatives, by the Secretary of Agriculture, and by the Staff of this Commission, but no decision was rendered by the Presiding Examiner, Harry W. Frazee. On July 31, 1964, the Senate Appropriations Committee issued a report on the Independent Offices Appropriations, 1965, stating the Appropriations Committee's belief that "the assertion of additional Federal regulatory authority over REA cooperatives by the FPC should await the decision of the Congress on pending legislation." The Committee expressed its intent that the Commission defer action in the present proceeding until the Congress could give additional attention to the jurisdictional question involved. Accordingly, by order of August 6, 1964, 32 FPC 529, we directed the Examiner to defer issuing his initial decision until January 1, 1966.

On December 29, 1965, the respondents, the Committee of Cooperatives and the Secretary moved for waiver and omission of the intermediate decision and for dismissal of the proceedings. On December 30, 1965, South Central renewed a previous motion to sever the proceedings as to it on the ground that none of its facilities were jurisdictional, *i.e.*, they were used exclusively in local distribution. The Staff answered, objecting to the severance but not to waiver of the intermediate decision. Upon examination of the record[1] it is our opinion that since the sole issue necessary to decision is essentially a legal one, the intermediate decision should be waived. We hold that the proceedings should be dismissed as to all three respondents.

The record shows that the three respondents are cooperatively owned electric companies borrowing from the Rural Electrification Administration. Dairyland generates, interchanges, transmits and sells electric energy in Wisconsin, Minnesota, Iowa and Illinois. It sells electric energy at wholesale for resale to 27 cooperatives, 5 investor-owned utilities and one municipality. It has one retail electric customer, a municipality. It is interconnected and exchanges electric energy with several other electric utilities, including Interstate Power Company, Northern States Power Company, Lake Superior District Power Company, Northwestern Wisconsin Electric Company and the City of Rochester, Minnesota and is a member of the Upper Mississippi Valley Power Pool.

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[1] We have directed the Secretary to certify the record to us for the purpose of decision.

Minnkota engages in a similar business in North Dakota and Minnesota and sells electric energy at wholesale for resale to one municipal customer, one investor-owned customer and 12 rural electric cooperatives. It does not make any retail sales of electric energy. It is interconnected with Northern States Power Company, Otter Tail Power Company, and with facilities of the Missouri River Basin and Fort Peck Projects, the Bureau of Reclamation and the United States Department of the Interior.

South Central purchases, transmits, distributes and sells electric energy in South Central Ohio, but does not own or operate generating plants and does not make sales for resale except possibly to the Lockbourne Air Force Base near Columbus, Ohio.

In our opinion, Congress never intended this Commission to regulate cooperatives under the Federal Power Act. This intention is reflected in the legislative history of the Federal Power Act, is confirmed by the legislative history of the Rural Electrification Act, is strengthened by subsequent expressions by the Congress and is ratified by this Commission's legislative interpretation over the past 30 years. These factors compel the conclusion that cooperatives financed by REA are not public utilities within the meaning of Part II of the Federal Power Act.

The Federal Power Act consists of the Federal Water Power Act of 1920 with minor amendments, *i.e.*, Part I; and the new Parts II and III which were included as parts of the same bill enacted as Title I of the Public Utility Holding Company Act of 1935. The purpose of that legislation was most clear: it was designed to prevent the notorious investment and profit abuses which had developed in the industry under the domination of the holding companies. This is evident on nearly every page of the legislative history. The entire focus of this legislation was directed to the privately-owned companies which held themselves out to render a public service. Thus it was that Mr. Dozier DeVane, Solicitor for the Federal Power Commission and one of the two principal architects of Part II testified:

> The CHAIRMAN. [Referring to the federal agencies] the reason why these things are not brought under this agency [the FPC] of the Government is that they are not operated for private profit.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-126

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 4, 1967)

On November 4, 1966, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-126 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of additional contract demand to two of its existing utility customers and the revision and initiation of firm natural gas service for five existing industrial consumers, all as more fully set forth in the application.

Wisconsin Southern Gas Company, Inc., has requested 200 Mcf of contract demand for firm service to an existing industrial customer, Minnesota Mining and Manufacturing Company, at Prairie du Chien, Wisconsin, for drying oven requirements.

Peoples Division of Applicant (Peoples) has requested an increase of 1000 Mcf of contract demand to satisfy requests for firm service to two existing industrial customers, the John Deere Tractor Works at Dubuque, Iowa, which will utilize the gas for processing, and the Rockford Brick and Tile Company, Rockford, Iowa, which will utilize the gas for kiln drying. Peoples also requests termination of 550 Mcf of contract demand authorized for Clinton Engines Corporation, Maquoketa, Iowa. The net increase in deliveries to Peoples will be 450 Mcf of contract demand.

Northern States Power Company has requested that 1,100 Mcf per day of its present contract demand be reserved for firm industrial service to the Ford Motor Company at St. Paul, Minnesota, for space heating.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 29, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The proposed sale of additional volumes of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale of additional volumes of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant to transport and sell the additional contract demand volumes requested by Applicant's distributor customers, and to transport and deliver to such distributor customers the specified volumes of firm gas for the four industrial customers.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The sales authorized by paragraph (A) above shall be commenced as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) Applicant is authorized to terminate the transportation and delivery of 550 Mcf of natural gas to Peoples for sale and delivery to Clinton Engines Corporation.

(E) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(F) Applicant shall notify the Commission of the date of commencement of service within 10 days of that date, and make appropriate rate filings as required by the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NOS. RP61-18, RP63-1, RP65-1; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP65-54; SOUTHERN NATURAL GAS COMPANY, DOCKET NO. RP65-55; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. RP65-56; TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. RP65-57

### ORDER RELEASING REFUNDS IN PART

(Issued January 4, 1967)

On December 23, 1964, the Commission issued an order, 32 FPC 1515, approving a rate settlement in the United Gas Pipe Line Company (United) dockets listed above. That order also directed United to retain, pending further Commission order, all amounts refundable to its customers, and provided for certain procedures and the filing of reports to aid us in the disposition of the retained amounts.

By order issued in the same dockets on April 21, 1965, 33 FPC 837, we authorized United and its escrow agent to release those portions of the re-setting forth the details of such obligation or an agreement assuming the obligation to pass on the refund.

(H) Pending further order of the Commission, United and its escrow agent shall retain all remaining refundable amounts in accordance with paragraphs (H) and (I) of Opinion No. 428-A entered in Docket No. RP63-1 on September 2, 1964, 32 FPC 687.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## YADKIN, INC., PROJECT NO. 2197

### ORDER AUTHORIZING EASEMENT IN PROJECT LAND

(Issued January 4, 1967)

Application was filed on October 10, 1966, by Yadkin, Inc., the licensee for Project No. 2197, seeking Commission permission to grant an easement to the Town of Denton, North Carolina, in a portion of project land.

The Licensee proposes to grant to the Town of Denton an easement in approximately 1.2 acres of project land for a water intake pipe, a pumping station, a sixteen-inch water main, and a power transmission line to provide power for the pumping station, in order that water may be taken from Licensee's Tuckertown Reservoir for use by the Town to replace its existing water supply obtained from ground wells for domestic, and commercial use. Licensee would grant an easement to the Town in the project land for the installation and operation of the above facilities. The easement would be subject to the rights and responsibilities of Licensee and its successors for Project No. 2197 and the requirements of Commission Order No. 313, issued December 27, 1965, (18 CFR 2.7(C)), 34 FPC 1546.

The Town of Denton has advised that it will initially take some 250,000 gallons per day from the reservoir and except for normal losses it will return this water to the reservoir after treatment in its sewage plant which will be built concurrently with the new water supply facilities.

*The Commission finds:*

It is necessary and appropriate for the purposes of the Federal Power Act to authorize the granting of the easement of right-of-way over project lands as described in the recital above upon the terms and conditions as hereinafter provided.

*The Commission orders:*

(A) Yadkin, Inc. is hereby authorized to grant the aforementioned easement to the Town of Denton, North Carolina, subject to the retention in any instrument granting such easement of the rights and responsibilities of the licensee and its successors and assigns for project purposes for Project No. 2197, and to a further condition that Yadkin, Inc. incorporate in any such easement a covenant or condition ensuring that the use of such lands will not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use in accordance with paragraph (C) of the Commission's Order No. 313, issued December 27, 1965 (18 CFR 2.7(C)).

(B) The Licensee shall file copies of the easement referred to in paragraph (A) above, with the Commission within 30 days of the date of its execution, accompanied by a print of the appropriate Exhibit K map marked to show accurately the extent and location of the land included in the easement.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP67-128

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 5, 1967)

On November 7, 1966, Algonquin Gas Transmission Company (Applicant) filed in Docket No. CP67-128 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon in place 0.67 mile of its 26-inch lateral pipeline J-1 in Lexington and Arlington, Massachusetts, and for a certificate of public convenience and necessity authorizing the construction and operation of 0.72 mile of 30-inch lateral pipeline to serve as a replacement for pipeline J-1, all as more fully set forth in the application.

The Massachusetts Department of Public Works has notified Applicant that a portion of Massachusetts State Route 2 in Lexington and Arlington, Massachusetts, is scheduled to be regraded, widened, and improved commencing in the summer of 1967. Applicant's lateral pipeline in this area is in the existing right-of-way on a revocable permit and will conflict with the proposed highway construction. Accordingly, Applicant deems it necessary to replace the 0.67 mile of existing lateral pipeline involved with approximately 0.72 mile of lateral pipeline in the immediate area.

The estimated overall capital cost of Applicant's proposed project is $305,500, which cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest has been filed herein.

At a hearing held on December 29, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Algonquin Gas Transmission Company, a Delaware corporation having its principal place of business in Boston, Massachusetts, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of February 26, 1951, in Docket No. G-1319 (10 FPC 35).

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities to be abandoned, as hereinbefore described, and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

**(6) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.**

**(7) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.**

***The Commission orders:***

**(A) A certificate of public convenience and necessity is issued to Applicant, Algonquin Gas Transmission Company, authorizing the construction and operation of facilities as hereinbefore described, and as more fully described in the application in this proceeding, upon the terms and conditions of this order.**

**(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of such Regulations.**

**(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date of this order.**

**(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.**

**(E) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.**

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## OPINION NO. 511

## DAIRYLAND POWER COOPERATIVE, MINNKOTA POWER COOPERATIVE, INC., SOUTH CENTRAL RURAL ELECTRIC COOPERATIVE, INC., DOCKET NO. E-7113

### OPINION AND ORDER WAIVING INTERMEDIATE DECISION AND DISMISSING PROCEEDINGS

(Issued January 5, 1967)

*Syllabus*

1. Congress never intended Commission to regulate cooperatives under the Federal Power Act—this intention is reflected in legislative history of Power Act; confirmed by that of Rural Electrification Act; strengthened by subsequent expressions by Congress; and ratified by Commission's legislative interpretation. P. 15.
2. Cooperatives financed by REA are not public utilities within meaning of Part II of Federal Power Act. P. 15.
3. Public Utility Holding Company Act of 1935 was designed to prevent notorious investment and profit abuses which developed in the industry under the domination of the holding companies. P. 15.
4. Reviewing legislative history of Power Act, Commission *concludes* that Section 201(f), exempting instrumentalities of the United States, includes cooperative respondents since they are instrumentalities chosen by Congress

for purpose of bringing abundant, low cost electric energy to rural America. PP. 16–18.

5. Concept has always been recognized that privately owned cooperatives can become instrumentalities of federal government when they are chosen as means by which a federal purpose is effectuated. P. 18.
6. Rural Electrification Act, enacted shortly after Federal Power Act, demonstrates that same Congress intended any federal controls over entities established to implement provisions of REA should be exercised solely by Administrator under that Act. P. 19.
7. Even in absence of legislation, Congress assumed that REA, as previously established by Executive Order, had power to control rates. P. 20.
8. Where Congress intends one agency of the federal government to review the performance of another, it normally says so. P. 21.
9. Since passage of Rural Electrification Act, Congress has steadfastly adhered to view that cooperatives are not covered by Federal Power Act and refused on every occasion to extend latter Act to include cooperatives. P. 22.
10. Interpretations of subsequent Congresses are not equivalent to the intention of the Congress enacting the bill. P. 23.
11. Administrative interpretation of a legislative mandate constitutes an especially persuasive factor in legislative interpretation. P. 23.
12. Upon analysis of administrative history regarding question of jurisdiction over cooperatives, Commission notes it is significant that in 30 years since enactment of Part II of Power Act, there has not been a single instance where it decided cooperatives are jurisdictional. PP. 24, 25.
13. It is a well-established principle that repeal of a statute by implication is not favored. P. 26.
14. While not of the opinion that Respondents here are subject to its jurisdiction under the Power Act, Commission makes clear that jurisdiction over major generating and transmission cooperatives in interstate commerce, as opposed to those merely transmitting and distributing electric energy [including those generating small amounts of power] would be in the public interest. PP. 27, 28.
15. Upon order to show cause, Commission *concludes* that Rural Electric Cooperatives are not subject to regulation under the Federal Power Act and *dismisses* proceedings.

Chairman White *concurring.*

Commissioner Bagge *concurring in part; dissenting in part.*

*Floyd E. Wheeler* for Dairyland Power Cooperative and Dairyland Member Cooperatives.

*Einar Johnson, Loren L. Johnson, Reuben Goldberg* and *George Spiegel* for Minnkota Power Cooperative, Inc.

*Robert P. Mone* and *David A. Johnston* for South Central Rural Electric Cooperative, Inc.

*Louis Gorrin, Ralph F. Koebel, Norman L. Plotka* and *Henry E. Freedman* for Orville L. Freeman, Secretary of Agriculture.

*Drexel D. Journey, John S. Everett, Jr.* and *Michael N. Mervin* for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A Carver, Jr.

Ross, *Commissioner:*

This proceeding commenced on July 22, 1963, when we issued an order directing Dairyland Power Cooperative of La Crosse, Wisconsin (Dairyland), Minnkota Power Cooperative, Inc. of Grand Forks, North Dakota (Minnkota), and South Central Rural Electric Cooperative, Inc. of Lancaster, Ohio (South Central) to show cause why they should not be required to comply with this Commission's reporting, accounting and rate schedule filing requirements. The important issue in the proceeding is whether rural electric cooperatives are subject to regulation by this Commission under the Federal Power Act.

Pursuant to our order, a hearing was held in December of 1963. Briefs were filed by the three respondents, by a Committee of Rural Electric Cooperatives, by the Secretary of Agriculture, and by the Staff of this Commission, but no decision was rendered by the Presiding Examiner, Harry W. Frazee. On July 31, 1964, the Senate Appropriations Committee issued a report on the Independent Offices Appropriations, 1965, stating the Appropriations Committee's belief that "the assertion of additional Federal regulatory authority over REA cooperatives by the FPC should await the decision of the Congress on pending legislation." The Committee expressed its intent that the Commission defer action in the present proceeding until the Congress could give additional attention to the jurisdictional question involved. Accordingly, by order of August 6, 1964, 32 FPC 529, we directed the Examiner to defer issuing his initial decision until January 1, 1966.

On December 29, 1965, the respondents, the Committee of Cooperatives and the Secretary moved for waiver and omission of the intermediate decision and for dismissal of the proceedings. On December 30, 1965, South Central renewed a previous motion to sever the proceedings as to it on the ground that none of its facilities were jurisdictional, *i.e.*, they were used exclusively in local distribution. The Staff answered, objecting to the severance but not to waiver of the intermediate decision. Upon examination of the record[1] it is our opinion that since the sole issue necessary to decision is essentially a legal one, the intermediate decision should be waived. We hold that the proceedings should be dismissed as to all three respondents.

The record shows that the three respondents are cooperatively owned electric companies borrowing from the Rural Electrification Administration. Dairyland generates, interchanges, transmits and sells electric energy in Wisconsin, Minnesota, Iowa and Illinois. It sells electric energy at wholesale for resale to 27 cooperatives, 5 investor-owned utilities and one municipality. It has one retail electric customer, a municipality. It is interconnected and exchanges electric energy with several other electric utilities, including Interstate Power Company, Northern States Power Company, Lake Superior District Power Company, Northwestern Wisconsin Electric Company and the City of Rochester, Minnesota and is a member of the Upper Mississippi Valley Power Pool.

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[1] We have directed the Secretary to certify the record to us for the purpose of decision.

Minnkota engages in a similar business in North Dakota and Minnesota and sells electric energy at wholesale for resale to one municipal customer, one investor-owned customer and 12 rural electric cooperatives. It does not make any retail sales of electric energy. It is interconnected with Northern States Power Company, Otter Tail Power Company, and with facilities of the Missouri River Basin and Fort Peck Projects, the Bureau of Reclamation and the United States Department of the Interior.

South Central purchases, transmits, distributes and sells electric energy in South Central Ohio, but does not own or operate generating plants and does not make sales for resale except possibly to the Lockbourne Air Force Base near Columbus, Ohio.

In our opinion, Congress never intended this Commission to regulate cooperatives under the Federal Power Act. This intention is reflected in the legislative history of the Federal Power Act, is confirmed by the legislative history of the Rural Electrification Act, is strengthened by subsequent expressions by the Congress and is ratified by this Commission's legislative interpretation over the past 30 years. These factors compel the conclusion that cooperatives financed by REA are not public utilities within the meaning of Part II of the Federal Power Act.

The Federal Power Act consists of the Federal Water Power Act of 1920 with minor amendments, *i.e.*, Part I; and the new Parts II and III which were included as parts of the same bill enacted as Title I of the Public Utility Holding Company Act of 1935. The purpose of that legislation was most clear: it was designed to prevent the notorious investment and profit abuses which had developed in the industry under the domination of the holding companies. This is evident on nearly every page of the legislative history. The entire focus of this legislation was directed to the privately-owned companies which held themselves out to render a public service. Thus it was that Mr. Dozier DeVane, Solicitor for the Federal Power Commission and one of the two principal architects of Part II testified:

> The CHAIRMAN. [Referring to the federal agencies] the reason why these things are not brought under this agency [the FPC] of the Government is that they are not operated for private profit.

> Mr. DEVANE. That is correct, sir. These are regulatory matters we are not concerned with.[2]

The Commission has acknowledged the Congressional intent to include only profit-making companies within the terms of Part I in *Nebraska Power Co.*, where it stated:

> We think this [the exemption provided by section 201(f)] obviously discloses a congressional intent to subject private enterprise alone to regulation by the Federal Power Commission, and not to extend that regulation to government and its instrumentalities. (5 FPC 8, 19)

The Commission continued that:

> The Act is a highly remedial one enacted by Congress upon consideration of and in reference to the abuses by private utilities which had been brought to the attention of Congress. (5 FPC 19)

Indeed, Mr. DeVane also testified, "Congress can go much further insofar as rate regulation is concerned than we propose to go in this bill * * *"[3]

The legislative history further makes clear in several points that there was no intent to include operations of government enterprise under Part II of the Federal Power Act. This is made clear in the following colloquy:

> Mr. WOLVERTON: Does this bill provide for any regulation by the Federal Power Commission over municipal, State, or Government enterprises?
>
> Mr. DEVANE: No, sir.
>
> * * * * * * *
>
> We have, insofar as State, municipal, or Government projects are concerned, excluded them from the jurisdiction of the Commission or from coming under this act.
>
> We have been earnest and honest in our effort to accomplish this result. We think we have done it. If we have not and it is the desire of Congress not to bring Government projects under the jurisdiction of the Commission, or give the municipal or governmental projects the right to use the transmission lines of private industry—and we have not succeeded in making that clear in this bill—an amendment should be proposed that will do it better. It will receive our hearty endorsement.[4]

In addition, Mr. DeVane stated:

> Now, insofar as the TVA, or any other governmental agency is concerned, those are agencies created by this Congress, and my

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[2] Hearings before the *House Committee on Interstate and Foreign Commerce and Public Utilities Companies*, 74th Cong., 1st Sess. p. 481.

[3] *House Hearings, supra*, p. 522.

[4] *House Hearings, supra*, pp. 513–514.

> process of reasoning—and I think it was the process of reasoning of everyone else that was associated with me in the consideration of this bill—is that it would be rather presumptuous on our part to come to this Congress and ask it to give this arm, this creature of its creation, jurisdiction over one of its others, and so we have not proposed and do not propose to ask, or to recommend to this Committee that it give to this agency, the FPC, jurisidiction over its agency, the TVA, or its agency Boulder Dam, or any other like projects.
>
> That is purely a Congressional matter and I would feel, frankly, if I were here making any such proposals, that you might feel disposed to throw me out on my head, and I do not know how I could blame you for it.[5]

To remove any possible doubt, Section 201(f) of the Act was added to the bill which explicitly exempts instrumentalities of the United States.[6] We think that this exemption includes the cooperative respondents. The cooperative movement was well known to Congress at the time the Federal Power Act was being considered, and the Congress gave extended attention to it. In this connection Mr. DeVane testified:

> The Rural Electrification, as I understand the program, is that the government will furnish funds to construct facilities—the work will be done by the government and the states—to run lines out into the rural territories.[7]

It was subsequent to this testimony that Section 201(f) which, as originally proposed, made no mention of instrumentalities, was amended specifically to incorporate this term within the exemption.

Of course, the particular form the REA Cooperatives would ultimately assume was not known at the time since this legislation was enacted in the year following passage of the Federal Power Act. Undoubtedly with this in mind, the exemption provision was drafted broadly. This is unlike, for example, the care and detail used by Congress in the Social Security Act to spell out and define which types and classes of instrumentalities should be exempt and which should not be exempt.

In the only Commission decision interpreting Section 201(f),[8] the Commission recognized the intent of Congress that this section be construed broadly. In fact, the Commission there construed the exemption provision to include a committee of private citizens who acquired a portion of the stock of a company which concededly had been a public utility.

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[5] *House Hearings, supra*, p. 480.

[6] Section 201(f): "No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto."

[7] *House Hearings, supra*, p. 2160.

[8] *Nebraska Power Co., supra.*

The record in this case establishes that the cooperatives constitute instrumentalities within the meaning of Section 201(f) of the Act. They are the instrumentalities chosen by Congress for the purpose of bringing abundant, low cost electric energy to rural America. As former Chairman Swidler phrased it, the REA "settled upon Cooperatives as its primary instrument for bringing the blessings of electric power supply to the farmers of this country."[9]

Under the Rural Electrification Act, the Administrator has virtually absolute discretion and exercises extensive and rigid supervision and control over its cooperative borrowers. The cooperative's books and records must be kept in accordance with the REA Uniform System of Accounts. Appointments of its manager, counsel, and other key personnel are subject to approval by REA. It cannot merge or consolidate, or sell or encumber any of its property without REA approval. The government's mortgage lien attaches to each of its extensions, and it cannot build extensions except with additional REA financing, or with REA approval of other financing. Thus, it cannot grow without REA approval. All of its contracts, including those for the purchase and sale of electric energy, must be approved by REA, and by this means REA controls the rates the cooperative pays and the rates it charges. Moreover, the need to return to REA for additional loans as the cooperative grows provides another mechanism whereby REA exercises control.

The thousands of pages of directives and instructions testify to the intimate relationship between the cooperatives and REA, a federal agency, and the extensive controls and guidance which it exercises.

It is also clear that Congress may employ state corporations with their consent, as instrumentalities of the United States. This is evidenced by Justice Holmes' opinion in *West Fall* v. *United States*, 274 U.S. 256 (1926) speaking for a unanimous Supreme Court. Similarly, the Supreme Court has held that a national farm loan association, a local cooperative membership corporation, constitutes an instrumentality of the Federal Government. Indeed, the concept has always been recognized that privately-owned cooperatives can become instrumentalities of the Federal government when they are chosen as the means by which a federal purpose is effectuated. This concept lies at the heart of Chief Justice Marshall's opinion in *McCulloch* v. *Maryland*, 4 Wheat. 316, 4 L. Ed. 579, 609 (1819), which sustained the constitutionality of federal incorporation of banks and their immunity from state taxation. The opinion closes with the words:

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[9] *The REA Cooperatives and the F.P.C.,* Joseph C. Swidler, Chairman, Federal Power Commission, Speech before North Central G & T Mgt. Conf., Minneapolis, Minn., May 8, 1963.

> This is * * * a tax on the operation of an instrument employed by the Government of the Union to carry its powers into execution.

In making this determination, we do not hold that any person who borrows funds from the United States is automatically exempt from the Federal Power Act. Our finding here relates only to the REA financing and control of rural electrification membership corporations.

Developments over the next nine months, during successive sessions of the Seventy-Fourth Congress, lend substantial support to this legislative intent. The record for the Rural Electrification Act, which was enacted shortly after the Federal Power Act, demonstrates that the same Congress intended any federal controls over entities established to implement provisions of the REA should be exercised solely by the Administrator under that Act. The REA constitutes a grant of plenary authority to the Administrator to make policy for, and to exercise regulatory authority over, the cooperatives established by the new Act. As Congressman Rayburn, the House spokesman for the bill made clear, Congress deliberately set forth "to lodge this power in one man's hands" in full recognition of the "great power that was given to the Administrator."[10] To the same extent, Senator Norris, a principal spokesman for the bill, stated on the floor:

> * * * in this proposed legislation we are giving, and we necessarily must give, if we are going to make a success of the measure, in my opinion, almost unlimited discretion, something that under ordinary circumstances I do not like to do. But if the Administrator, whoever he may be, carrying out this proposed law is not at heart converted to the idea embodied in it, namely, to extend the blessings of electricity to the farmers of America, he could easily wreck this whole program and still be technically in the right.[11]

This much was recognized even by those who opposed the legislation, typified by Senator King, who declared, "the Administrator is clothed with extraordinary power."[12] On the House side, Congressman Wolverton stated, "the purpose of the proposed legislation is to establish a permanent and comprehensive national policy for rural electrification * * *"[13] The comprehensiveness of the legislation was recognized by Congressman Merritt, who earlier indicated "it is at least undemocratic to give one man unlimited control over this enormous sum of money to be used throughout the entire United States."[14]

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[10] 80 *Cong. Record* 5281.

[11] 80 *Cong. Record* 3308.

[12] 80 *Cong. Record* 3313.

[13] 80 *Cong. Record* 5293.

In addition to these indications of Congressional intent to vest plenary authority in the REA, it is apparent that Congress gave explicit consideration to the question of rate jurisdiction. It was anticipated that "*this* legislation should go a long way toward providing the greater modern utility, electricity, and at a reasonable rate;" [emphasis added][15] and that *this* is the only way the farmer would ever receive electricity at reasonable rates.[16]

A speech by Administrator Cooke, inserted in the *Congressional Record*, states the following:

> In conjunction with the approval of projects, REA is insisting that rate schedules be adopted which will encourage the generous use of electricity. A special effort is being directed toward breaking down antiquated systems of high minimum monthly charges and of requiring consumer cash contributions before lines are extended.[17]

Even in the absence of legislation, Congress assumed that the REA, as previously established by Executive Order, had the power to control rates. Congressman Fletcher stated on the floor:

> Here I wish to call to the attention of the Members of Congress the fact that these reductions in rates have come about without any regulatory actions or attempted regulatory action by the Rural Electrification Administration.[18]

This certainly implies that REA did have control over the rates charged by the cooperatives.

It is true that during the House hearings, Administrator Cooke disclaimed authority over rates, but it is also true that he clearly limited his response to local rates where the states had jurisdiction. His further testimony stated: "I know, as Administrator, that I am absolutely without power in the matter of fixing rates within the boundaries of a state. We have not attempted to do it."[19]

This exclusive authority vested in the Administrator was made clear, even where other agencies of the government were expressly given a role in the program. Thus, while Section 3(a) of the REA authorized the Reconstruction Finance Corporation to make loans to the Administrator, the debates demonstrate that the Administrator's judgment should prevail in determining whether a person or group should receive a loan.

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[14] 80 *Cong. Record* 5277.

[15] 80 *Cong. Record* 5312.

[16] *Ibid.*

[17] 80 *Cong. Record* 5288.

[18] 80 *Cong. Record* 5308.

[19] Hearings before the Committee on Interstate and Foreign Commerce, 74th Cong., 2nd Sess., on S. 3483, A Bill to Provide for Rural Electrification and for Other Purposes, p. 51.

While this, to us, constitutes a satisfactory indication that Congress intended to give the Rural Electrification Administration, and not the Federal Power Commission, control over cooperatives, there is the further point that where Congress intends one agency of the Federal government to review the performance of another agency, it normally says so specifically. In this instance, neither Act mentions the other. Going still further, the General Counsel's opinion suggests that one test is whether authority could be exercised by this Commission without interfering with the operations of the Rural Electrification Administrator in carrying out his tasks under the Rural Electrification Act. While the General Counsel properly recognized one sphere of activity in which there could clearly be a conflict, *i.e.*, loans issued by REA, he failed to recognize other areas. For example, if cooperatives were public utilities under the Federal Power Act, the Commission could order them under Section 202(b) to establish physical connection with the facilities of other electric systems and could require them to construct an extension line for this purpose (since the only pertinent restriction is that it cannot compel enlargement of generating facilities). Section 4 of the Rural Electrification Act, however, specifically provides that REA loans "shall be on such terms and conditions relating to the expenditure of the moneys loaned and the security therefor as the Administrator shall determine." REA's form of mortgage provides that the cooperative, without REA's approval, will not construct, make, lease, purchase or otherwise acquire any extensions or additions to its system. An obvious conflict would result if the Commission ordered a cooperative to build an extension, but the REA Administrator refused permission because he determined that purposes of the Rural Electrification Act would not be served thereby.

It is not, moreover, merely a question of the expenditure of loan funds for an extension. The loan agreement itself prohibits the cooperative from entering into any contract for "electric energy with which to operate the system" or for the sale of electric energy unless the effectiveness of each contract shall be conditioned upon the approval of the Administrator."[30] Section 202(b) of the Federal Power Act provides, however, that the Commission may also order a public utility involved to sell energy to or exchange energy with the other party and that the Commission may prescribe the terms and conditions of the arrangement.

Under Section 203(a), the Commission exercises control over the sale, merger, or consolidation of public utilities. However, the REA itself has been instrumental in all features in cases involving the merger of cooperatives. This is made clear by the example of the

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[30] The REA Administrator's actions are reviewed by Congress itself, and for 28 years Congress has assented to this form of loan agreement.

1956 merger involving Minnkota. Thus, under Sections 205 and 206, the Commission could prescribe rates charged by cooperatives, although rates were a vital aspect of REA's participation and determination in the above-mentioned merger involving Minnkota. The same incongruity and potential conflict exists with other portions of the Act, namely Section 305(b), covering interlocking relationships, and Sections 301 and 302, involving the Commission's accounting requirements.

Throughout the years, since the passage of the Rural Electrification Act, Congress has steadfastly adhered to the view that cooperatives are not covered by the Federal Power Act, and has refused on every occasion to extend the latter Act to include cooperatives. In 1939, H.R. 6292 was introduced for the purpose of giving this agency authority to review REA loans. No action was taken on it. In 1946, H.R. 5555 would have required this Commission's approval of REA loans for generating or transmitting plants where no state regulation existed. Again no action was taken. In that same year, a rider to the REA appropriations bill would have required the Commission to certify that there was insufficient electricity available in the area at reasonable rates as a condition precedent to the granting of loans by the REA. The floor debates on that proposal manifest the Congressional intent on the issue before us.

Senator Magnuson commented, "This amendment * * * will retard the rural electrification program by causing all these questions to be referred to a bureau in Washington where lengthy arguments may be made on the question of rates. * * * I think the REA should be in the same position as any other Federal loan agency. If cooperatives or if any group of farmers can come to the REA and can show it good reason why it should be loaned money, and it is a good financial risk and if they have paid back almost every loan they have obtained in the past, *there should not be any restriction on it.*" [emphasis supplied][21]

Senator Aiken declared, "And, of course, all the power companies * * * would have to do is to go before the Federal Power Commission and drag their case out through several months or years and the farmers * * * would take a licking."[22]

Senator La Follette remarked, " * * * If the pending amendment becomes a part of the law, the case can be brought to the Federal Power Commission, and action delayed interminably. In many cases the farmers will be caused expense * * * *to prove before the Federal Power Commission that the rate is unreasonable.*" [emphasis supplied][23]

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[21] 92 *Cong. Record* 1801.

[22] *Ibid.*

[23] 92 *Cong. Record* 1809.

The assumption of the above statements was that the Commission did not have and was not to have any jurisdiction over loans or rates even though the cooperatives might have electric energy which they generated and transmitted for resale in interstate commerce. The proposed rider was defeated, 52–21. Similar isolated efforts the succeeding year were left dormant.

This same Congressional attitude has been reflected in recent years.[24]

We, of course, recognize that interpretations of subsequent Congresses are not equivalent to the intention of the Congress enacting a bill. Nevertheless, Congress' repeated rejection of efforts to subject any activities of cooperatives to our authority helps to reinforce our conclusion that Congress did not initially intend us to regulate such entities under Part II.

Administrative interpretation of a legislative mandate constitutes an especially persuasive factor in legislative interpretation. This is a well-established criterion. In *McLaren* v. *Fleischer*, 256 U.S. 477, 480–481 (1920), the Supreme Court held:

> * * * the practical construction given to an act of Congress, fairly susceptible of different constructions, by those charged with the duty of executing it is entitled to great respect and, if acted upon for a number of years, will not be disturbed except for cogent reasons.[25]

Certainly, if the Supreme Court is thus disposed, it behooves the agency itself to carefully consider its long-standing interpretation of the Power Act. Especially is this so here, where the Commission has without exception refused to assert jurisdiction over cooperatives, since the very inception of their existence. Probably the single most significant factor occurred immediately following the enactment of Part II of the Act when the Rural Electrification Act was under consideration. Counsel on the staff of the FPC and REA had exchanged letters on the precise question now before us and concluded that the FPC had jurisdiction over cooperatives.[26] In the face of this exchange, the Commission itself unanimously rejected this view and concluded that there was no source of duplication of control or conflict of functions, potential or actual, with the single exception of authority to gather information. This is made perfectly clear in the Commission's response to the Senate Committee's request for comments,[27] which was submitted within a month of the exchange of letters described above. That letter, after stating the Commission's full endorsement of the REA program, noted that in one limited respect, there would be a possible duplication of effort with the REA Administrator's authority. Specifically, the letter indicated the pending Act would authorize the Administrator "to make studies, investigations and reports concerning the condition and progress of electrification of rural areas and to publish information with respect thereto." The Commission letter then stated that "the Commission feels it is under the duty to direct your Committee's attention to the mandate given this Commission in section 311 of the Federal Power Act * * * to investigate and keep current information * * * regarding the sale of electric energy and its service * * * to rural * * * consumers * * *" The letter concluded, "It is only because of the proposed duplication of functions now delegated to this Commission that we bring this matter to your attention for such consideration, if any, as in your judgment it may deserve."

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[24] Sen. Rep. No. 641, 88th Cong., 1st Sess. (1963); *Cong. Record* Aug. 8, 1963, p. 13738, 88th Cong., 1st Sess.

[25] Quoted with approval in *Udall* v. *Tallman*, 380 U.S. 1, 18 (1964).

[26] Memorandum by Jack Levin to Vincent Nicholsen, REA General Counsel, Re: Jurisdiction of the FPC over REA, January 11, 1936; Letter from Jack Levin to FPC, January 22, 1936; Letter from FPC, January 24, 1936. See also letter from Oswald Ryan, FPC General Counsel, to REA, February 8, 1936.

[27] Letter from Chairman, Federal Power Commission to Hon E. D. Smith, Chairman, Senate Committee on Forestry and Agriculture, February 17, 1936.

It is not conceivable, if the Commission believed it might have jurisdiction over rural electric cooperatives then or in the future, that it would not have mentioned this fact. After all, what would produce greater duplication of activities between the Commission and REA than the exercise of jurisdiction by the Commission over REA-financed cooperatives? Even though the Administrator and his staff would have studied the plans and operations of the cooperatives and taken their loan action in the light of those studies and plans, the Commission could review them once again and direct changes to be made in those plans. It could order interconnections which the Administrator disapproved. It could prevent transfers, mergers or consolidations which the Administrator felt were most important and had already reviewed and approved. It could refuse to approve power contracts which a generating and transmission cooperative had made with the very distribution cooperatives which controlled it, even though the Administrator had in effect required precisely those contracts.

It is impossible to conceive that a Commission which saw fit to mention only such an insignificant duplication as that of gathering certain information would fail to mention the problems arising from Commission jurisdiction, if it believed it had that jurisdiction, when such jurisdiction would result in duplications and possible nullification of the Administrator's authority and work.

The specific question of this Commission's jurisdiction over cooperatives was again raised on December 3, 1943. This is the date of a letter sent by the North Georgia Electric Membership Corp. to the Commission stating the cooperative's view that the Commission had no jurisdiction. A notation appears in that file indicating that the Commission considered this communication at a regular meeting and referred to the Bureau of Law for a legal opinion, the question whether the Commission had authority to require compliance with its accounting requirements by cooperatives. No further action on this matter was taken. It is safe to assume, however, that the Bureau of Law complied with the Commission's directive. Nevertheless, the Commission thereafter refused to assert such jurisdiction.

In the single Commission decision in 1946, dealing with this issue,[28] the Commission explicitly held that Congress intended to cover only private utilities, and not government instrumentalities. See pp. 15, 16, *supra*. No elaboration of that holding seems necessary.

This is not all. On June 21, 1951, the Secretary of the Commission sent a letter to Dairyland[29] alleging that Dairyland was a public utility, and should file its rate schedules. Dairyland responded, contending it was not under the Commission's jurisdiction. The issue again was presented to the Commission, together with a legal opinion from its Staff. And again, the Commission decided not to take any action.

In concluding on this point, we think it significant that over the past 30 years since enactment of Part II of the Federal Power Act, there has not been a single instance where this Commission decided the cooperatives are jurisdictional. Moreover, Staff, the only party claiming that such jurisdiction exists, is completely silent on the question of administrative interpretation. In the light of the background discussed above, it is perfectly clear that the Commission has not sought to exercise such jurisdiction, and we are persuaded that such decision is an appropriate one.[30]

The administrative history viewed from the perspective of the REA leads to the same conclusion. From the time the REA was established in 1935 as an executive program, administration at that agency has proceeded upon the assumption that cooperatives financed by it are not subject to loan or rate authority from any other federal agency.[31] Thus, the Executive Order of President Roosevelt, dated August 7, 1935, provides that "the Administrator is given exclusive authority to approve and to execute with a borrowing agency a loan contract under the terms of which the borrowing agency agrees to construct or cause to be constructed the project according to specifications determined or approved by the Rural Electrification Administration. * * * The method by which any project shall be prosecuted shall be determined exclusively by the Administrator. * * *"[32]

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[28] *Nebraska Power Co., supra.*

[29] The letter does not indicate it was sent by direction of the Commission.

[30] The memorandum by the General Counsel dated May 20, 1963, does allude to certain letters, etc. signed by various Staff employees, and certain filings by cooperatives. As to the first category, it should be quite clear that pronouncements by Staff are hardly binding on the Commission. Respecting the second category, these constitute voluntary filing situations where no issue was raised as to the status of cooperatives as public utilities or involve export licenses which any person must obtain.

[31] Reliance upon state regulation of rates in certain isolated instances is irrelevant, for it does not assist in resolving the potential duplication or conflict of authority between this Commission and the REA.

Following approval of the REA, the Administrator continued to exercise such authority, and gradually increased his regulation as the program expanded. As stated by the agency in 1940, "[Audits and inspections] do more than merely verify records; they disclose situations which guide the management, load-building and other specialists in their efforts to help the borrowers become successful operating enterprises."[33] The record in this proceeding is replete with evidence on the question of the exact extent to which the Administrator exercises authority over cooperatives which would conflict with what the Commission requires under its statutory mandate. It is not for us to resolve this conflict. Congress has expressly authorized the Administrator to exercise virtually unlimited and continuing regulatory authority over the operations of cooperative borrowers, which authority has been fully exercised for over thirty years.

We have examined the terms and the legislative history of both Acts. We have also examined the Congressional and administrative interpretation of those Acts over the past 30 years. Despite the fact that the issue periodically came to the fore, the record over this extended period discloses not a single instance where Commission jurisdiction over cooperatives was asserted. All the indications are to the contrary. We therefore conclude that such jurisdiction does not presently exist.

Contrary to the dissenting opinion, we disagree that there is a sufficient foundation for concluding that cooperatives are "public utilities" under the Federal Power Act for some purposes, but not for others. The Federal Power Act does not permit a distinction between part of a company's activities being regulated but other parts not being regulated. To conclude that REA repealed the Federal Power Act—but only certain sections—requires a particularly facile imagination in view of the fact that nothing—absolutely nothing—in the entire legislative history suggests such a Congressional intent.

Against the background of the legislative history of these two Acts, it is a little astonishing that the dissent agrees fully with the well-established principle that repeal by implication is not favored. However, the dissent plucks a vintage decision by the Supreme Court as the solitary basis for its razor-fine distinction.[34] In *Borden*, the

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[32] Executive Order Prescribing Rules and Regulations Relating to Approved Projects Administered by the Rural Electrification Administration Under the Emergency Relief Appropriations Act of 1935, Regulation No. 4, August 7, 1935.

[33] U.S. Rural Electrification Administration, Annual Report, at p. 17 (1940).

[34] *U.S.* v. *Borden*, 308 U.S. 188 (1939).

Supreme Court stated:

> It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts upon the same subject, the rule is to give effect to both if possible.

The Court added that to establish repeal by implication only, there must be a positive repugnance between the provisions of the new law and those of the old law.

Both of the Acts here in question were passed by the same Congress nearly simultaneously, and Congress indicated its awareness of cooperatives in considering the Federal Power Act, and of the Federal Power Act in considering the Rural Electrification Act. Yet in passing the latter Act, no attempt was made to repeal any portion of the Federal Power Act. However, assuming *arguendo* that a repugnance exists, we do not see any basis for asserting it solely with respect to the matters covered by Section 204 of the Federal Power Act. As pointed out before, the REA has exercised from the very beginning and continues to exercise authority over cooperatives in respect to the matters covered by Sections 202, 203, 205, 206, 301, 302, and 305 of the Federal Power Act as it does regarding those matters covered by Section 204.

In any event, it seems unnecessary to treat at any length the *Borden* case, since it was specifically explained and limited by the Supreme Court in *U.S.* v. *Zacks*, 375 U.S. 59 (1963). That case involved the claim by a taxpayer that a retroactive amendment to the Tax Code in effect repealed a statute of limitations, a claim rejected by the Supreme Court. In *Zacks*, the Supreme Court criticized the *Borden* decision in the following language:

> But the paucity of its [the Borden decision] existence here is illustrated by the fact that both parties rely on it.

Regarding the arguments of the parties based on *Borden*, the Supreme Court observed:

> There are difficulties with both of these analyses. Obviously neither of them does more than cast a conclusion in terms of the general rules isolated from the particular circumstances of this case. (375 U.S. 68)

In *Zacks*, the Supreme Court emphasized that "since our sole concern is the intent of Congress in adding this section to the Code, it is necessary to look to the administrative and legislative background of the enactment." (375 U.S. 62) This is the approach we have attempted to follow. Based on this approach, we find that the cooperatives are not public utilities under the Federal Power Act, for any purposes.

While it is our opinion that the respondents here are not subject to our jurisdiction under the Power Act, we wish to make it clear that jurisdiction over major generating and transmission cooperatives in interstate commerce, as opposed to those that merely transmit and distribute electric energy (including those generating small amounts of power), would be in the public interest. These G&T cooperatives have become increasingly important in recent years in the amount of revenues realized and in power generated. They sell electric energy to REA distribution cooperatives. They also sell to, and exchange power with, investor-owned utilities and engage in interstate pooling of electric energy. Such operations are part of the interstate business of transmitting and selling electric energy for ultimate distribution to the public including not only the members of the cooperatives, but the ultimate customers served through the investor-owned utilities with which the generating and transmission cooperatives are interconnected. Since the generating and transmission cooperatives have become an important segment of the interstate electric industry, at least in certain parts of the country, they should not be exempt from regulation. While there may be incipient conflicts between regulation by this Commission and the Administrator of REA, as argued by the respondents here, we are confident that these could be resolved by the Congress in the most appropriate manner.

In view of the disposition we are making here, it will not be necessary to consider the other jurisdictional issues in this proceeding.

*The Commission orders:*

(A) The motion of South Central for severance is denied.

(B) The motion for waiver of the intermediate decision is granted.

(C) The proceedings relating to Dairyland, Minnkota and South Central in Docket No. E-7113 are dismissed.

Chairman White *concurring.*

Commissioner Bagge *concurring in part* and *dissenting in part.*

WHITE, *Chairman, concurring statement:*

I concur with the majority in the dismissal of this proceeding, but for reasons which differ somewhat from those of my colleagues.

The precise issue in this case is whether the Commission was intended to assume jurisdiction under the Federal Power Act over rural electric cooperative borrowers from the Rural Electrification Administration. The majority contends that although such cooperatives are not specifically mentioned in the Federal Power Act, its legislative history and the legislative history of the Rural Electrification Act make clear that Congress intended them to be included in the broad exemption afforded to public "instrumentalities" set out in Section 201(f). On the other hand, Commissioner Bagge contends that "public utility" as defined in Section 201(e) is sufficiently broad to encompass rural electric cooperatives and that Congress so intended. Contrary to the majority, he does not believe the legislative history of the Rural Electrification Act shows an intent on the part of Congress to give the REA Administrator plenary authority over borrowers, nor does he believe that conflict would exist if the FPC assumed jurisdiction over them.

In attempting to determine whether a matter falls within the ambit of a legislative enactment, first recourse is naturally to the wording of the statute. Here I think it is clear that the statute is silent on the critical question whether the Commission was ever intended to assume jurisdiction under its regulatory authority over rural electric borrowers from another government agency. Where the wording of the statute is not clear on its face, it is appropriate to turn to the legislative history to determine Congressional intent. On the basis of my own efforts and those of my colleagues, as demonstrated by their conflicting interpretations of the same legislative history, I cannot conclude that Congress intended either that the FPC exercise jurisdiction over rural electric cooperatives or that it intended to exempt them as instrumentalities of the federal government.

It is not surprising that neither the wording of the statute itself, nor its legislative history, is not dispositive of the issue involved here. While there was some recognition at the time the Federal Power and Rural Electrification Acts were pending in Congress of the interrelationship between the two programs, the status of the potential rural electric borrowers was hardly such as to provide a basis for believing that they would ever fit the statutory definition of a "public utility" subject to the Federal Power Act.

I recognize, of course, that statutes may sometimes be construed to apply to types of activities or to entities not specifically focused upon at the time of their enactment. If that were the only issue, the argument that public utility status attaches to rural electric cooperatives would have considerably more weight. The question here, however, is not merely whether the Federal Power Act is broad enough to encompass such entities, but whether it was ever intended to operate in an area in which another federal agency has been granted major responsibilities. Of course, there is nothing necessarily improper or illogical for two agencies of the government independently to exercise dominion over different facets of a particular program, and it may well be that the public interest would be served by a properly defined dual or joint authority in this area. Indeed, some rural electric cooperative borrowers from REA have already sought to bring themselves under our jurisdiction.

I wish to make it clear that I am in complete agreement with the recommendation in both of the other opinions that FPC jurisdiction (exclusive of the REA financing of such cooperatives) over the large multi-state generating and transmission cooperatives would be in the public interest. But the respective roles of the several agencies are a matter for Congressional determination and to date Congress has only consciously assigned a role in the regulation of borrowers from the REA to that agency. Accordingly, I must concur with the majority in granting the motion for waiver of the intermediate decision and the motion to dismiss the proceeding.

BAGGE, *Commissioner, concurring in part and dissenting in part:*

This controversy—instituted over three years ago—has been as strongly and bitterly contested as any issue in this Commission's history. Indeed, it is quite unlike any case in the Commission's turbulent past. For this controversy has not been restricted to its legal dimensions. It began as a legal proceeding but has been transformed from a narrow administrative inquiry concerning a question of legislative and regulatory policy into a political and emotional issue which still echoes in the halls of Congress and in less austere meeting halls across the land.

This controversy, which was courageously initiated by my predecessors and which today has something less than courageously been resolved by my contemporaries involves no idle academic exercise. It has real significance to the Nation. Its implications are exceedingly broad.

Its implications relate directly to such vital national values as the achievement of the economies of scale in the generation, transmission and distribution of electricity for the Nation, the marketing of interstate wholesale power at reasonable rates and upon fair and nondiscriminatory terms, and the security and reliability of the Nation's electric power resources. It touches and concerns not only the nature and the scope of the policies and objectives underlying the Federal Power Act specifically but addresses itself to the nature of the relationship between legislative policy and the administrative process generally. Its most profound implications deal with a philosophy of the law—with the nature of the legal function in our society. Its implications in each of these areas are most unfortunate.

My colleagues, after exhaustively wallowing in the murky and ambiguous recesses of legislative history conclude that there exists no basis for the Commission's assertion of jurisdiction because they say they can find no evidence that Congress expressly intended to include cooperatives within the pattern of regulation created by the Federal Power Act. They thereby provide a rationale for shifting the burden for responsible action in the national interest to the Congress. This may provide an expedient but certainly not a courageous nor even a legal disposition of the issue.

If a legitimate argument could be made that Congress intended to exclude those such as Respondents[1] from the ambit of the Federal Power Act, I would be obliged to join my colleagues and shift this burden to Congress. To do so is sound both doctrinally and pragmatically. The administrative process must operate only within the areas circumscribed by Congressional policy. This is sound doctrine. Any usurpation of legislative power by the administrative process in a manner inconsistent with Congressional policy would constitute a wholly futile act. Hence, a cautious interpretation of our jurisdiction is essential.

But this issue, in my opinion, does not raise any doubt as to the proper course of regulatory policy within a delegated legislative framework. Were it otherwise, I would unhesitatingly join my colleagues.

This question is not an esoteric exercise in legal theory having little or no relationship to the real world. The cooperatively owned segment of the Nation's electric utility industry occupies a role of great and, indeed, of growing importance. The generating and transmission cooperatives engaged in wholesale operations in interstate commerce are not groups of local farmers serving themselves. They are instead large modern corporations having all of the attributes of great regional institutions which have assumed national importance. They are an important and integral part of the Nation's power complex.

Respondents' functions illustrate the important status which the generation and transmission cooperatives occupy in the national power complex. Dairyland owns and operates ten generating facilities operating in parallel with each other in Wisconsin and Minnesota. Its total generating capacity is 368,400 Kw. It has a 2,524 mile network of interconnected high voltage lines in Wisconsin, Minnesota, Iowa and Illinois. Dairyland's Class D members[2] include: Northern States Power Company; Interstate Power Company; Lake Superior District Power Company; North West Wisconsin Power Company; City of Rochester, Minnesota; and City of Platteville, Wisconsin. Dairyland is interconnected with the systems of these special members, and exchanges energy with and makes wholesale sales to them.[3] In addition, it is a member of the Upper Mississippi Valley Power Pool and through the Pool interconnects with other electric utilities engaged in electric utility operations in a seven-state area in the Midwest.

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[1] Respondents hereafter is used to refer only to Dairyland Power Cooperative and to Minnkota Power Cooperative, Inc., since I concur in the majority's conclusion that we should dismiss South Central Rural Electric Cooperative, Inc., a purely distribution cooperative. Although I concur in the result reached by the majority in dismissing South Central, I do so on the basis of the Commission's treatment of Home Power and Light rather than for the reasons stated by the majority in their opinion.

Home, like South Central, purchases all of its power at wholesale, does not engage in any sales for resale, own or operate any generating facilities, or wheel power for others. We do not have jurisdiction over either its rates or security issuances. Based on the exemption of Section 201(b) of the Federal Power Act the Commission concluded, "Without making any definitive determination of the question, and without prejudice to any claims of Home to complete exemption, it is apparent that Home's facilities and operations are for the most practical purposes those of a local distribution company." (See Secretary's letter to Home Power, dated May 28, 1965. See also Ltr., Chmn., FPC to Chmn., Senate Committee on Commerce, May 27, 1965.) In these circumstances, the Commission determined not to exercise jurisdiction. Consistent with my position that all in similar circumstances should be treated similarly, I would apply the Home doctrine to South Central.

Minnkota is owner and operator of seven electrically paralleled generating facilities with a net capacity of 47,000 Kw in the states of North Dakota and Minnesota. Its interconnected 1,500 mile network of high voltage transmission lines covers a 35,000 square mile area in these states. A participant in the Upper Mississippi Valley Power Pool, it is interconnected with Northern States Power Company of Minnesota, Otter Tail Power Company and the Bureau of Reclamation's Eastern Area System. It engages in sales for resale to its 12 cooperative members, to one municipal and one investor-owned utility. It interchanges power with Otter Tail and Northern States Power Company, and wheels power to certain municipal customers of the Bureau of Reclamation in North Dakota and Minnesota.

The issue here is whether the policies and objectives underlying the Federal Power Act were intended to embrace institutions of this magnitude and geographic diversity irrespective of the cooperative form of their ownership or whether the policies and objectives of the Rural Electrification Act were intended to excuse cooperatives from the responsibilities which otherwise inure to technologically advanced electric power suppliers of this character.

This question ultimately involves the application or non-application of the "public utility" concept under Sec. 201(b) of the Federal Power Act[4] to Respondents. This determination must be made in the light of the over-all purposes and the pattern of regulation established by the Federal Power Act and in view of the more limited purposes underlying the enactment of the Rural Electrification Act.[5]

The Federal Power Act is designed for the regulation of commerce—commerce in electric energy.[6] Parts II and III provide for the regulation of the portion of that commerce which arises from interstate transmission or interstate wholesale sales of energy. The Act deems commerce to be interstate whenever electric energy is transmitted from one State and consumed in another.[7]

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[2] Class D members are not entitled to the same voting rights in the conduct of cooperative affairs as are other members of the cooperative.

[3] Dairyland's wholesale customers include 27 cooperatively-owned, 5 investor-owned, and one municipally-owned electric utilities. Dairyland also has one retail electric customer, a municipality.

[4] 16 U.S.C. 824.

[5] 7 U.S.C. 901, *et seq.*

[6] *United States* v. *Public Utilities Commission of California*, 345 U.S. 295, 299, 304, 311 (1953).

Section 201(b) of the Federal Power Act provides, "* * * this Part [II] shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce * * * [and] all facilities for such transmission or sale of electric energy * * *." Persons who own or operate facilities of that type, and who thereby engage in interstate commerce, are denominated "public utilities."[8]

The transactions and persons which are intended to be regulated under Parts II and III of the Act are simply stated in terms of interstate electric commerce. In passing the Power Act, Congress provided an all inclusive definition of "person:"[9]

> * * * an individual or * * * any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing * * *

and an equally broad definition of the "interstate commerce" in which such persons are to be engaged [Section 201(c)]:

> * * * electric energy * * * transmitted from a state and consumed at any point outside thereof * * *

Having prescribed the interstate commerce-facilities test for "public utility" status under Parts II and III of the Federal Power Act, Congress did not then stultify its efforts to regulate such commerce by requiring an inquiry, in cases of public utility status determinations, into wholly irrelevant matters such as the corporate character of the person owning or operating an interstate electric system, the historical development and profitability or non-profitability of that person's electric and other business activities, the extent to which that person may or may not have restricted his electric clientele and the particular methods by which that person may finance his electric system.

The interstate commerce test makes the scope of this Commission's Parts II and III jurisdiction just as broad as the commercial intercourse which power technology and business economics are capable of producing. Congress no more sought to circumscribe the Act's coverage to 1935 operating conditions than it sought to foresee how every then-known method of interstate electric commerce might be changed in future years and to legislate in detail for each of those particular interstate systems, based upon their peculiar corporate or operating conditions. Congress instead focused its attention upon the act of interstate commerce and assumed that changed conditions would occur. Changes have occurred.

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[7] Section 201(c), 16 U.S.C. 824(c); *Jersey Central Power & Light Co.* v. *F.P.C.*, 319 U.S. 61, 71; and *Pennsylvania Water & Power Co.* v. *F.P.C.*, 343 U.S. 414, 420 (1952).

[8] Section 201(e), 16 U.S.C. 823(e).

[9] Section 3(3), (4), 16 U.S.C. 796.

Since 1935 the Nation has witnessed the development of huge interstate power grids and interstate power pooling operations, mine mouth and nuclear generation. Federal regulation has accordingly followed these changes in structure and technology insofar as the investor-owned utilities are concerned.[10] The fledgling cooperative electric systems as they existed in 1935 have kept pace with these changes. The establishment of large generating and transmission combines such as Dairyland and Minnkota operating in interstate commerce is part of the cooperative's response to that technology. The issue here is whether the pattern of Federal regulation contemplated by Congress should not follow the same changes in structure and technology of the cooperatively owned utilities as it has with regard to investor-owned utilities.

Any interpretation of the Federal Power Act which is consonant with fairness and reason and with the plain meaning of the statute would, in my opinion, include Respondents among those to be regulated by this Commission.[11] My colleagues, however, begin with a different premise. They contend that there must exist within the Federal Power Act an affirmative expression of such intent. Having concluded that the pattern of Federal regulation contemplated by Congress in the Federal Power Act extends to Respondents, I am nevertheless obliged to examine the Rural Electrification Act to determine whether that Act sought to exclude Respondents notwithstanding the fact that they own and operate facilities for the transmission and sale for resale of electric energy in interstate commerce. In my opinion, the plain meaning of the statutory language of the Rural Electrification Act conferred no such exemption—it effected no broad repeal. In this respect my colleagues' and my basic assumptions also differ. The majority, while assuming, on the one hand, that an affirmative expression of Congressional intent must exist within the Federal Power Act to include Respondents, wholly inconsistently assume that the absence of an affirmative expression of Congressional intent exempting Respondents in the Rural Electrification Act, nevertheless, effected a repeal of the Federal Power Act.

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[10] *U.S. v. Public Utilities Commission of California, et al.*, 345 U.S. 295; *City of Colton v. Southern California Edison Co.*, 376 U.S. 205; *Indiana & Michigan Electric Company*, Docket No. E–7089, Opinion No. 458, 33 FPC 739, issued June 11, 1965, *aff'd, Indiana & Michigan Electric Co. v. F.P.C.*, 365 F. 2d 180 (CA7–1966), cert. denied (Oct. term 1966), December 5, 1966, No. 646; *Arkansas Power & Light Company*, Docket No. E–7090, Opinion No. 473, 34 FPC 747, issued September 7, 1965, *aff'd*, 368 F. 2d 376 (CA8–1966); *Public Service Company of Indiana, Inc.*, Docket No. E–7163, Opinion No. 483, issued December 22, 1965, 34 FPC 1513; *Cincinnati Gas & Electric Company*, Docket No. E–7125, Opinion No. 485, issued January 19, 1966, 35 FPC 99.

[11] Section 201(f) does not, in my opinion, bar this conclusion. The majority concludes that the Respondent Cooperatives are "instrumentalities of the United States" and expressly exempt from Commission jurisdiction by Section 201(f) of the Federal Power Act. The legislative history of the Federal Power Act makes clear, however, that this provision was intended to apply solely to wholly publicly owned and managed utilities such as the TVA, the municipals and public utility districts. That the cooperatives are not such public entities is also clear from the legislative history of the Rural Electrification Act. For example, the bill originally presented to the Senate described the cooperatives as "private cooperatives," to distinguish them from public entities. The Committee draft dropped the word "private" because it was thought that the distinction was already clear, and it was feared that the qualification might give rise to cooperatively organized institutions for profit. See discussion between Senator Norris and Senator McNary, 80 *Cong. Record*, 2755–2756. See also statement of Senator Norris to Senator Lewis, 80 *Cong. Record*, 2751.

The Administrator neither owns nor operates any jurisdictional facilities. As to the cooperatives themselves, the mere grant of a loan by a government agency does not render the recipient an "instrumentality." *FHA v. Burr*, 309 U.S. 242 (1940). Rather, the cooperative becomes a "beneficiary not an instrumentality of the United States." *Waterbury Savings Bank v. Danaher*, 20 A. 2d 455, 459 (1941).

### *Rural Electrification Act*

My colleagues, having, in my opinion, disregarded the plain meaning of the statutes involved, turn to the legislative history of the Rural Electrification Act in an effort to justify their decision. The basic contentions of the majority are that (1) Congress "consciously gave plenary authority to the Administrator to make policy for and exercise regulatory control over the entities to be established to carry out the policy of the new Act," to the exclusion of the exercise of jurisdiction by this Commission, and that (2) an "obvious conflict" would exist by the exercise of regulatory jurisdiction by this Commission under the Federal Power Act and the exercise of the powers of the Administrator under the Rural Electrification Act. Neither of these conclusions is supported, in my opinion, by the legislative history of the Rural Electrification Act.

#### *Plenary Authority Issue*

The majority contend that the legislative history of the Rural Electrification Act establishes an intent by Congress to give the REA Administrator plenary authority with respect to making policy for and regulating cooperatives. Thus, they conclude that Congress intended that any regulation to be exercised over the cooperatives was to be performed by the Administrator.

In support of this conclusion, the majority contend that, when the Congress intends dual exercise of federal authority, it makes express provision therefor, citing the Federal Power Act, the Bonneville Act, the Flood Control Act of 1944, the Tennessee Valley Act, and the Reconstruction Finance Act. I find no significance in this argument. To the extent I am familiar with the legislative history of these statutes, it is clear that the express provision for dual authority, rather than being characteristic of Congressional enactments generally, was made because of the peculiar circumstances surrounding the purpose of these bills or the political climate of the times.

The Supreme Court has ruled with respect to a comparable issue affecting the National Farm Loan Association (which comprises the cooperative banks established under the Federal Land Bank program) that where Congress desired to grant such entities immunity, it expressly so provided. Thus, the Court concluded that legislative silence as to the matters at issue defeated the cooperatives' claims to immunity.[12]

That legislative silence is of no significance in resolving the question of the propriety of the dual exercise of jurisdiction by federal entities is well known to this Commission. The Supreme Court, in the El Paso divestiture case, has ruled that notwithstanding approval and certification of the merger of two pipeline companies by this Commission, the Antitrust Division of the Department of Justice, and the District courts, have the responsibility to pass on the antitrust aspect resulting from such mergers—this, despite the fact that the Natural Gas Act is totally silent as to any role in such mergers for the Antitrust Division.[13]

The majority's position is, as a consequence, nothing more than an attempted refinement of the Respondents' and Interveners' arguments that, by necessary implication, the Rural Electrification Act has repealed the Federal Power Act. The law simply does not support that position.

The Supreme Court, in *Borden*, has ruled:

> It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts upon the same subject, the rule is to give effect to both if possible. *United States* v. *Tynen*, 11 Wall 88, 92, 20 L. Ed. 153, 154; *Henderson's Tobacco*, 11 Wall 652, 657, 20 L. Ed. 235, 237; *General Motors Acceptance Corp.* v. *United States*, 286 U.S. 49, 61, 62, 76 L. Ed. 971, 977, 978, 52 S. Ct. 468, 82 ALR 600. The intention of the legislature to repeal "must be clear and manifest." *Red Rock* v. *Henry*, 106 U.S. 596, 601, 602, 27 L. Ed. 251, 253, 1 S. Ct. 434. It is not sufficient, as was said by Mr. Justice Story in *Wood* v. *United States*, 16 Pet. 342, 362, 363, 10 L. Ed. 987, 995, "to establish that subsequent laws cover some or even all of the cases provided for by [the prior act]; for they may be merely affirmative, or cumulative, or auxiliary." There * * * must be "a positive repugnance between the provisions of the new law, and those of the old; and even then the old law is repealed by implication only *pro tanto* to the extent of the repugnancy."

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[12] *Federal Land Bank* v. *Priddy*, 295 U.S. 229, 233–235 (1935), alluding to legislative silence as to exempting the co-ops from levy and attachment, the Court said, "Had it been intended otherwise [to grant immunity], it would seem to have been at least equally necessary to provide specifically for immunity from attachment and levy as was done in Section 10 of the Federal Railroad Control Act."

[13] *California* v. *Federal Power Commission*, 369 U.S. 482 (1962).

See also *Posadas* v. *National City Bank*, 296 U.S. 497, 504, 80 L. Ed. 351, 355, 56 S. Ct. 349.[14]

So it is clear that unless there was specific Congressional intent to grant plenary regulatory authority to the Administrator, we cannot abdicate our regulatory responsibility with regard to Respondents. In my opinion, an objective analysis of the legislative history of the Rural Electrification Act establishes that no such grant of plenary authority was intended.

The bill was introduced in both the Senate and the House on January 6, 1936. In the Senate, it was referred to the Senate Committee on Agriculture and Forestry where, on February 17, 1936, without having held public hearings, it was favorably reported. The Senate debated the bill from February 25, 1936 through March 5, 1936, on which date it was passed. In the House, the bill was referred to the Committee on Interstate and Foreign Commerce, the same committee which in the 74th Congress, 1st Session, had considered and reported the Federal Power Act. Hearings were conducted on March 12, 13 and 14, 1936, and statements were received from Mr. Morris Cooke, Administrator of the REA, and interested Congressmen. In addition, a statement in opposition to the bill was submitted to the committee by the Committee of Utility Executives. The bill was carefully considered and debated and passed the House on April 9, 1936.

Except in the course of a denial of intent to establish general regulatory powers by the Administrator,[15] a denial that any such power had been exercised in achieving the results to date,[16] and comments pointing out that such powers were left to the existing authorities in the field,[17] the concept of vesting general regulatory authority in the Administrator was never discussed in either House, in hearing or in floor debate.

It must be recalled that the general regulatory authority of this Commission had been established by the same Congress in the midst of great controversy the previous year. To conclude that legislative history supports the contention that Congress in enacting the Rural Electrification Act evidenced an intent to transfer all regulatory authority with respect to cooperatives from this Commission to the Administrator is historical nonsense. The majority contends that the absence of express provision for dual federal authority means that Congress intended no such authority. The majority opinion in the next breath goes on to surmise that Congress in fact never thought about the co-ops operating in any context other than local distribution. This is an inconsistent posture, since if the members of Congress were not thinking about wholesale sales in interstate commerce, they could hardly have intended silently to divest the Federal Power Commission of its express statutory authority.

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[14] *U.S.* v. *Borden*, 308 U.S. 188, 198–199 (1939).

[15] See pp. 38–40 *infra*.

[16] See Remarks of Congressman Fletcher, 80 *Cong. Record* 5308.

[17] See Remarks of Congressman Lea, 80 *Cong. Record* 5316.

In testimony before the House Committee on Interstate and Foreign Commerce, Administrator Cooke was questioned concerning the scope of his authority as Administrator:

> Mr. Huddleston. Have you assumed, in the contracts that you have made, in dealing with the matter of terms, to specify the terms for the sale of current?
>
> Mr. Cooke. We have not. Our provision is that such rates must be charged as will tend to satisfy the loan. But we have not gone into particulars, because it is an area in which we, under our conception of the law, have no authority. The setting of rates is entirely a State matter.
>
> * * * * * * *
>
> Mr. Huddleston. You have power under this Executive order to fix terms of loans?
>
> * * * * * * *
>
> Mr. Cooke. We have interpreted the Executive order in the light of our conception of the laws of the land, both Federal and State laws. I know, as Administrator, that I am absolutely without power in the matter of fixing rates within the boundaries of a State. We have not attempted to do so.[38]

There follows a discussion concerning the significance of the Administrator's approval of borrowers' contracts for purchasing electric energy at wholesale. The Administrator pointed out this did not suggest an ability by the Administrator to do anything other than to insure that the project was economically feasible.

Mr. Huddleston then resumed his inquiry concerning the reaches of the Administrator's authority. He noted the broad standards and powers granted the Administrator in Sections 2, 4 and 5 of the proposed bill.

Then he asked:

> I want to know whether that gives the Administrator power to fix rates either a maximum or a minimum. I think we ought to be certain what we are doing when we pass this law.
>
> Mr. Cooke. I have some hesitation in saying to this committee what the law is. But I have absolutely none, speaking for myself as an individual or as Administrator, in saying that we have no power to fix rates.[39]

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[38] Hearing on S. 3483 (Rural Electrification) by the U.S. House Committee on Interstate and Foreign Commerce, March 12, 13 and 14, 1936; pp. 50–51.

[39] *Ibid.*, pp. 52–53. See also Administrator Cooke's remarks, p. 30.

The majority contend the role provided for the Reconstruction Finance Corporation in the rural electrification program is further evidence of Congressional intent to vest the Administrator with plenary authority. The legislative history on this point shows that the sole purpose of introducing the Reconstruction Finance Corporation into the rural electrification program was to provide a means of temporary financing for the infant program without resorting directly to the Treasury.[20] Since the RFC used different standards for granting loans than that proposed by the Administrator, it was essential to define what role each office would play.

The majority also rely on the statement of Congressman Rayburn, the House spokesman for the bill, to support their claim of a Congressional grant of plenary authority. Again, the context of the statement is most revealing. When the bill was brought up for debate in the House, it met vocal opposition. Congressman Merritt led the attack, contending that:

> It is at least undemocratic to give one man unlimited control over this enormous sum of money to be used throughout the entire United States.
>
> * * * * * * *
>
> It is a risky matter and an unwise procedure to create these enormous funds and allow them to be used without definite instructions or any supervision.[21]

These are the criticisms which prompted Congressman Rayburn's comments:

> The gentleman from Connecticut [Mr. Merritt] remarked about the bill and the great power that was given to the Administrator * * *. We might as well lodge this power in one man's hands as to lodge it in the hands of a commission, because in many instances that just brings about a debating society that is not in the interest of expedition of business.[22]

Taken out of context these words might be misunderstood to support the majority's position. But in proper context the exchange merely emphasizes the Congressional purpose to establish a lending agency which, with respect to the granting of loans, was to be free from external interference.

That Members of the House understood the limited nature of authority granted the Administrator is apparent from the floor debates. The first speaker in the House debates, Congressman Miller, noted:

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[20] 80 *Cong. Record* 3236.

[21] Remarks of Mr. Merritt, April 9, 1936, 80 *Cong. Record* 5277–5278.

[22] Remarks of Congressman Rayburn, 80 *Cong. Record* 5281, April 9, 1936.

> The bill * * * does nothing except to provide a means whereby rural electrification may be made possible. We still have the question of rates to deal with * * *.[23]

And, Congressman Rayburn, the Chairman of the House Committee on Interstate and Foreign Commerce and floor manager of the bill:

> May I say * * * By this bill we hope to bring electrification to people who do not now have it * * * May I say further that the Rural Electrification Administration will have nothing whatever to do with the rates that may be fixed in these communities, for the simple reason that matters will be controlled by State law.[24]

Similar comments were expressed by Mr. Lea of California, another member of the Committee.[25]

The simple and elemental fact is, that the only clear intent evidenced by the Congress in the consideration of the Rural Electrification Act is that Congress intended to and did establish a federal authority to receive appropriations to be used for dispensing loans to non-profit cooperative associations of farmers and citizens for the purpose of acquiring, constructing and operating facilities to introduce electricity to rural America on as wide a basis as the principle of self-liquidation would permit.[26]

The references in House and Senate debate to the broad discretion granted the Administrator are all addressed to the necessity of such discretion with respect to the issuance of loans and the construction of facilities. The principal concern of the Congress was related to the adequacy of the security for the loans proposed.[27]

The Administrator's authority with respect to construction standards as essential to the purpose of the Act is also clear. For example, responding to a suggestion for requiring federal competitive bidding standards, the Senate floor manager, Senator Norris, argues the necessity of the Administrator being afforded great flexibility in construction procedures to permit organizations of farmers to employ methods of self-help which mandatory competitive bidding requirements might preclude.[28]

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[23] 80 *Cong. Record* 5273.

[24] *Ibid.*, p. 5283.

[25] *Ibid.*, p. 5316.

[26] Letter of Administrator Morris Cooke to the Chairman, Committee on Agriculture and Forestry, February 3, 1936. See also remarks of Senator Norris, the bill's sponsor and floor manager, on the purpose of the bill, 80 *Cong. Record* 2751; remarks of Chairman Rayburn, 80 *Cong. Record* 5283; remarks of Congressman Withrow, 80 *Cong. Record* 5279; and Congressman Wolverton, 80 *Cong. Record* 5293.

[27] 80 *Cong. Record* 5278.

[28] See also testimony of Administrator Cooke, regarding (1) avoidance of excessive construction standards, and (2) REA exercise of engineering review of construction quality over projects. House Hearings, pp. 41, 42.

Congress did not act in a vacuum. It must reasonably be presumed to have known the scope of jurisdiction entrusted to this Commission, and the legislative history clearly establishes this to be a fact. Despite repeated reference to the Federal Power Act during the course of the debate,[29] no effort was made to expressly exclude the cooperatives from our jurisdiction. The legislative history makes clear the Congressional intent not to expand the Commission's jurisdiction and to exclude it from any participation in the granting of the loans. It also makes clear, that nothing in the Rural Electrification Act was intended to "impinge upon," "count out," or "interfere with" the Federal Power Commission in the exercise of its jurisdiction under the interstate commerce clause of the Constitution.[30]

*Conflict of Authority Issue*

There remains the second basic issue of whether the Rural Electrification Act effected a repeal of the Federal Power Act because of the alleged conflict between the exercise of the regulatory power of this Commission and the loan supervisory responsibilities of the Administrator. In my opinion, the principles of *Borden, supra*, are decisive of this issue.

One piece of this argument should be resolved initially in order to focus on the broader issue. In this proceeding it is clear, both from the legislative history and the express provisions of the two acts that the exercise of authority by this Commission over loan contracts is superfluous, and contrary to Congressional intent. I, thus, concede that, as to the limited purpose of the Rural Electrification Act, that Act has repealed the provisions of the Federal Power Act authorizing this Commission to pass on the loans approved by the Administrator. This is a simple matter of statutory construction, and the proper use of rules and standards applied by the courts as discussed in *Borden, supra.*

I, therefore, agree with the analysis of the Commission's General Counsel,[31] that the proper application of a basic rule of statutory interpretation resolves this issue. The courts have consistently held that a specific legislative enactment takes precedence over and repeals all earlier statutes insofar as they are in essential conflict with the terms and requirements of the later statute.[32]

The Rural Electrification Act vests sole discretion and responsibility over the approval of such loans in the Rural Electrification

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[29] See, for example, 80 *Cong. Record* 2825, 2830, 3233, 3234.

[30] See colloquy between Senators King and Norris, 80 *Cong. Record* 2825.

[31] Opinion of the General Counsel re Federal Power Commission authority over cooperative borrowers from the Rural Electrification Administration dated May 20, 1963, Appendix A (Commission Staff Brief March 16, 1964).

[32] *U.S.* v. *Tynen,* 11 Wall 88, 92 (1870); See also *Posadas* v. *National City Bank,* 296 U.S. 497, 503–505 (1935).

Administrator. In that Act, Congress did not see fit to provide for administrative or judicial review of the Administrator's actions with respect to such loans. I have no doubt that, as to cooperatives obtaining loans from the Administrator, the Rural Electrification Act has impliedly repealed the earlier, inconsistent provisions of Section 204 of the Federal Power Act. Indeed, that this was the intent of Congress seems unquestionably clear from the legislative history of the Rural Electrification Act.[33]

The Respondents and Interveners argue, however, that the exercise of regulatory jurisdiction by the Federal Power Commission under Parts II and III of the Federal Power Act would be inconsistent and conflict with the exercise of the powers, functions and responsibilities of the Administrator under the Rural Electrification Act. It is apparent from the legislative history that Congress foresaw no conflict. In fact, with respect to the relationships between the cooperatives and the state authorities, Congress clearly contemplated the exercise of regulatory jurisdiction by the States.[34] For example, the Act itself (Section 4) requires the consent of the state authority having jurisdiction before making a loan for the construction, operation or enlargement of any generating plant. And, as noted previously, time and again the sponsors of and floor managers for the bill emphasized the fact that the States would regulate the rates. If Federal regulatory authority presents a necessary conflict with REA's administration of the Act, *a fortiori*, such conflict arises vis-a-vis exercise of regulation by each and every State.

Minnkota contends that a side-by-side, section-by-section analysis of the Federal Power and Rural Electrification Acts establishes an irreconcilable conflict between any Commission jurisdiction and the jurisdiction of the Administrator. It contends that each important aspect of Commission jurisdiction conflicts with REA's statutory authority.

In the present case, the Secretary of Agriculture concedes that the purpose of the Rural Electrification Act and the Federal Power Act are not identical and that the relationship between the Rural Electrification Administration and the cooperatives is not that which a regulatory agency bears to the persons subject to its jurisdiction.[35]

Just as the court in *Borden*, *supra*, we are confronted with a claim that the limited procedure available under the Rural Electrification

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[33] A proposed amendment providing for limited FPC participation in studies preparatory to granting of loans was rejected on the grounds that this was not a function for the FPC (80 *Cong. Record* 2825).

[34] The early Administrators recognized that the cooperatives were subject to existing state regulation and that any exception from state regulation would require specific statutory exemption. See, for example, *Rural America Lights Up*, Harry Slattery (third REA Administrator), National Home Library Foundation, 1940, page 45 and the general discussion through pages 38 to 48.

[35] Brief of the Intervener, Orville L. Freeman, Secretary of Agriculture, pages 74–75.

Act is a substitute for the broad regulatory concepts of the Federal Power Act. I find no grounds for so holding.

Indeed, except with respect to terms and conditions required to protect the security of rural electrification loans, a matter over which we have here disclaimed jurisdiction, I find no conflict. Assuming such conflict would exist, it would arise not as a result of any provisions of the Rural Electrification Act, but from the rules and regulations of the Administrator.

The cooperatives and the Administrator do not really contend that the Rural Electrification Act repeals the Federal Power Act. Rather, they contend that the Rural Electrification Act grants authority to the Administrator, in his discretion, to promulgate regulations having the force and effect of repealing the Federal Power Act. Obviously, there is no legal warrant for such a conclusion.

There is nothing in the legislative history to indicate a Congressional purpose to delegate authority to the Administrator, in his sole discretion, to determine the circumstances under which loan recipients would be subject to compliance with the variety of laws which their operations might otherwise subject them to. Indeed, since the legislative history and the text make clear that such entities would be subject to state regulatory authority, quite the opposite result is dictated. The breadth of discretion afforded the Administrator with respect to the imposition of conditions in the granting of loans is comparable to that afforded the National Labor Relations Board under Section 10(c) of the National Labor Relations Act.[36] The Supreme Court has ruled concerning that Act:

> This authorization is of considerable breadth, and the courts may not lightly disturb the Board's choice of remedies. But it is also true that this discretion has its limits, and we have already begun to define them * * * It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so singlemindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.[37]

It is clear that the authority granted the Administrator to issue loans "on such terms and conditions relating to the expenditures of the monies loaned and the securities thereof as the Administrator shall determine" does not empower the Administrator to bestow substantive exemptions from compliance with the Federal Power Act to the loan recipients. The law on this point is quite clear. Regulations which conflict with an Act of Congress or with a treaty which is the law of the land are, to that extent, void.[38]

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[36] 29 U.S.C. 160(c).

[37] *Southern Steamship Co. v. National Labor Relations Board, et al.*, 316 U.S. 31, 46–47.

The cooperatives suggest that it would be a novelty of law for them to be subject to the Administrator pursuant to their loan contract and, at the same time, subject to jurisdiction of this Commission. This is, however, by no means novel. The law is replete with cases where this precise situation exists. For instance, intercoastal shippers in certain circumstances, are entitled to low interest loans administered by the Federal Maritime Administration, pursuant to the Federal Maritime Act, for construction of vessels, and with respect to their rates and terms of service, are regulated by the Interstate Commerce Commission. As I have already noted, 33 natural gas pipeline companies must obtain the approval of this Commission in order to acquire the facilities and assets of another natural gas pipeline. But, the approval and certification of such mergers by this Commission is no bar to antitrust prosecution by the Department of Justice.[39] Also, in the field of antitrust actions, violations of the Sherman Antitrust Act are within the province of the Antitrust Division of the Justice Department while the same conduct may be subject to the jurisdiction of the Federal Trade Commission.[40]

The cooperatives do not here contend that there are at present any direct conflicts between the rules and regulations of the Commission and the terms and conditions imposed on their loan contracts by the Administrator. They claim instead that the dual exercise of jurisdiction would be restrictive on the Administrator and that the exercise of jurisdiction by the Commission would afford opponents of the rural electrification movement a forum not heretofore provided. Of course, the applicable cases do not recognize a mere potentiality of conflict as a premise for determining an implied repeal of an act. As to the potential forum which this Commission's proceedings might provide, this is a reality which every entity subject to the Commission's jurisdiction must face. Certainly, a movement as viable and necessary as the cooperative movement cannot fear extinction merely because its opponents are given a forum. The principal danger alleged is that the availability of such a forum would permit opponents to the cooperative movement an opportunity to delay essential projects. This, however, ignores the fact that this Commission has no authority over the location and construction of such projects, with the exception, of course, of hydroelectric facilities, in which case we already provide a forum for friend and foe alike. As to the other potential conflicts cited by the cooperatives, a careful analysis will show that these have been magnified out of all proportion. The cooperatives contend that the Commission's exercise of jurisdiction would subject them to compliance with our uniform system of accounts with a variety of evil consequences. However, the cooperatives have long boasted that their system of accounts is adopted from and conforms with the Commission's system of accounts. While concern is expressed concerning the staff position regarding acquisition adjustments paid by cooperatives there is no showing that the staff position, as such, has been ruled on or accepted by the Commission and, the Commission has long permitted exceptions to its accounting practices for good cause shown. Similarly unfounded is the inference that the Commission's exercise of its ratemaking jurisdiction would conflict with the Administrator's loan making authority in that subsequent actions by the Commission might impair the Administrator's security on his loan. This simply ignores the legal standards and limitations on Commission authority with respect to its ratemaking powers.

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[38] *U.S. ex rel. Goodwin* v. *Karnuth*, 74 F. Supp. 660 (1947); *Manhattan G. E. Co.* v. *Commissioner of Internal Revenue*, 297 U.S. 129, 134–135 (1935); 80 L. Ed. 528, 531; *Peoples Bank* v. *Eccles*, 161 F. 2d 636, 644 (1946) (*U.S.* v. *Jones*, 100 F. 2d 65).

[39] *California* v. *Federal Power Commission*, *supra*.

[40] *Cf. Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 92 L. Ed. 1011 (1947).

The brief of Respondent Dairyland lists 19 restrictions imposed by the Administrator on Dairyland through the loan contract and mortgage which it contends include all elements pertaining to regulatory jurisdiction by the Commission and adequately protects any public interest incident to the making of such loans. Of course, the interest of the Commission extends far beyond the terms and conditions of the loan, the quality of construction and the adequacy of security. The exercise of the Administrator's powers with respect to these items and with respect to the question of relationships among cooperatives is no substitute for the statutory exercise of jurisdiction by this Commission.

### *Federal Power Act*

Having disposed of the majority's reliance on the legislative history of the Rural Electrification Act, I turn now to the legislative history of the Federal Power Act.

The legislative history of the Federal Power Act is almost totally devoid of reference to the cooperative movement. What is significant, however, is that the cooperatives were no strangers to Congress at the time the Federal Power Act was passed. Special provision for preference rights to purchase power for cooperatives was made in the TVA Act.[41] The 74th Congress, five days after the enactment of the Federal Power Act, amended the Tennessee Valley Act to provide authority for the Tennessee Valley Authority to finance cooperatives in its area.[42] In addition, in the Emergency Appropriations Act of 1934, a sum of $100 million had been appropriated for the Executive Office of the President for establishing the Rural Electrification Administration,[43] which ultimately came into being pursuant to Executive Order 7037 of May 11, 1935. Thus, the revised language of the Federal Power Act amending and expanding the definition of "corporation" as it appeared in the original Federal Water Power Act assumes special significance since it is clear that the definition encompasses cooperatively organized electric utilities.[44] Thus, contrary to the contention of the majority, what would be needed in the Federal Power Act or its legislative history to remove cooperatives from jurisdiction of this Commission would be express provisions for their exemption.

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[41] Act of May 18, 1933, Public Law 17, 73rd Congress, 1st Session, The Tennessee Valley Authority Act of 1933, 48 Stat. 58 (Section 10 and Section 12).

Even if the circumstances described above had not occurred and even if it could not reasonably be said that the cooperative movement was known to Congress, the fact remains that Congress established a pattern of Federal regulation of commerce which was intended to embrace all forms of interstate commerce in electricity as it existed or as it might be developed in the future as advances in power technology altered the nature of such commerce. The fact that the Respondents were not in existence in 1935 does not alter the fact that by subsequently engaging in interstate transmission of electricity they have, thereby, become subject to the provisions of the Federal Power Act.

By circumscribing the scope of the Federal Power Act, my colleagues have transformed what Congress intended to be a rational document intended to function in an industrial area of changing technology into a static and sterile historical tome. This decision strikes the very heart of the Federal Power Act. It frustrates the purpose for which the administrative process was conceived—as an adaptable instrument of government designed to accommodate and to relate legislative policy to a dynamic and changing industrial society. To the Federal Power Act and to the administrative process generally, the decision of the majority is, therefore, an unfortunate precedent.

## *Conclusion*

I join the majority in requesting a reappraisal of this issue by Congress. But, simply because this case presents a politically controversial issue, we are not entitled to take the easy way out. It is clear that the 74th Congress acted decisively in defining the responsibilities of this Commission. It is clear that Respondents, Dairyland and Minnkota, are engaged in activities subject to the jurisdiction of this Commission. It is clear that it is our responsibility to exercise that jurisdiction. At the same time, I believe the Congress could well study the matter anew to determine if any amendments to the Federal Power Act and the Rural Electrification Act are dictated by present day circumstances. The majority concedes the need for the exercise of Federal Power Commission jurisdiction. I share that view.

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[42] Act of August 31, 1935, Public Law 412, 74th Cong., 2nd Sess., 49 Stat. 1075 (Section 7).

[43] Joint Resolution of April 8, 1935, 74th Cong., 1st Sess. 49 Stat. 115.

[44] In explaining the change in definition the House Report stated: "At present the term relates only to electric companies, but in drafting the new sections it has been more convenient to relate it to all corporations and to all forms of organizations." House Report to accompany S. 2796, Report 1318, 74th Congress, 1st Session (1935) at p. 22.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## LUMAR GAS CORPORATION, DOCKET NO. CP66-412

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 5, 1967)

On June 10, 1966, Lumar Gas Corporation (Applicant), filed in Docket No. CP66-412 an application as supplemented on August 24 and October 24, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to operate natural gas gathering facilities and to sell natural gas to Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application and supplements thereto.

Applicant has been selling gas to Texas Eastern for use as compressor fuel and has not sought or received authorization therefor because it believed such direct sales for compressor fuel use were not subject to the Commission's jurisdiction. The subject filing is in response to a Commission request that Applicant file for certificate authorization as a result of the Supreme Court's *Lo-Vaca* decision.[1]

Applicant purchases gas from 9 independent producers in five fields on the Gulf Coast of Texas, which is transported through Applicant's facilities, comprised of 15.8 miles of 3- and 6-inch lateral pipelines and miscellaneous metering facilities, and delivered to Texas Eastern at various points on the latter's transmission facilities in Texas. The deliveries are made pursuant to a gas sales contract dated August 12, 1960, as amended, at a separate fixed rate for each field, with an overall range of from 12¢ to 14¢ per Mcf for all the gas delivered. The average daily quantity to be delivered under the contract is currently 14,000 Mcf.

The facilities by means of which the transportation of natural gas by Applicant is accomplished are described as follows:

(1) A 2-inch meter station, Gyp Hill Field, Brooks County, Texas,

(2) 12,500 feet of 3-inch pipeline extending from the East Midway Field, San Patricio County, Texas,

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[1] *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366.

(3) 35,820 feet of 6-inch pipeline extending from the Appling Field, Jackson County, Texas,

(4) 35,510 feet of 6-inch pipeline extending from the South Lucky Field, Matagorda County, Texas, and

(5) A 4-inch meter station, Nada Field, Colorado County, Texas.

Applicant states that no communities nor mainline industrial customers are served by it along these pipelines and that it does not own or operate any compressor stations, gasoline plants, dehydration plants, gas storage projects or other major facilities appurtenant to said pipelines.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, other than that filed and withdrawn by the State of California and the Public Utilities Commission of the State of California, have been filed.

At a hearing held on December 29, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Lumar Gas Corporation, a Texas corporation having its principal place of business in Houston, Texas, upon commencement of the proposed transportation of natural gas in interstate commerce and the sale of natural gas in interstate commerce for resale will be engaged in the business of transporting and selling natural gas in interstate commerce subject to the jurisdiction of the Commission, and will therefore be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed continued operation of facilities, transportation and sale of natural gas in interstate commerce as hereinbefore described, and as more fully described in the application, supplements and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed continued operation of facilities, transportation and sale of natural gas in interstate commerce as hereinbefore described are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding authorizing the continued operation of facilities, transportation and sale of natural gas in interstate commerce as more fully described in the application, supplements and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) Lumar Gas Corporation shall file within 30 days after the issuance of this order its tariff executed in accordance with the Commission's Regulations reflecting the terms and conditions of the transportation, sale and delivery of natural gas on its system to Texas Eastern Transmission Corporation.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP67-98

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 5, 1967)

On October 17, 1966, Midwestern Gas Transmission Company (Applicant) filed in Docket No. CP67-98 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of increased volumes of natural gas to existing customers, all as more fully set forth in the application.

Applicant seeks to increase peak day sales authorization on its northern system by 75 Mcf per day, commencing November 1, 1966, and by a subsequent increase of 3,246 Mcf, commencing November 1, 1967, amounting to a total increase of 3,321 Mcf. Applicant is presently authorized to make sales from its northern system of 213,796 Mcf.

Applicant states that no new facilities are needed to meet the proposed increased deliveries.

Applicant proposes to deliver the following additional volumes:

*Daily volumes in Mcf–14.73 psia*

| Customer | Present contract demand | Proposed increases beginning— | | Proposed contract demand |
|---|---|---|---|---|
| | | Nov. 1, 1966 | Nov. 1, 1967 | |
| North Central Public Service Company | 575 | 25 | 100 | 700 |
| Northern States Power Company | 30,870 | | 2,880 | 33,750 |
| Perham, Minnesota (Village of) | 675 | 50 | 50 | 775 |
| Wisconsin Gas Company | 1,385 | | 216 | 1,601 |
| Total | 33,505 | 75 | 3,246 | 36,826 |

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on December 29, 1966, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found

by the Commission in its order of May 12, 1959 in Docket No. G-16841 (21 FPC 653, 663).

(2) The proposed sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Midwestern Gas Transmission Company, authorizing the sale and delivery of natural gas as hereinbefore described and as more fully described in the application in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The sales and deliveries authorized in paragraph (A) shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations by January 1, 1967.

(D) Applicant shall make appropriate tariff filings reflecting the increased service authorized herein.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SWITZERLAND COUNTY NATURAL GAS COMPANY AND TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP67-129

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 5, 1967)

On November 7, 1966, Switzerland County Natural Gas Company (Applicant) filed in Docket No. CP67-129 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Gas Transmission Corporation (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 1,138 Mcf of natural gas per day for resale and distribution in the City of Vevay, Indiana, and environs, all as more fully set forth in the application.

Applicant proposes that Respondent make physical connection with Applicant's proposed facilities at a point on Respondent's 26-inch transmission line approximately ten miles southeast of Vevay, Indiana. Applicant further proposes to construct and operate approximately 10.5 miles of 4.5-inch lateral pipeline extending eastwardly from Respondent's transmission line to the City of Vevay, together with a distribution system in said city.

Silgas Corporation, the parent company of Applicant, distributes propane in central and southern Indiana. Its Vevay branch, known as Vevay Silgas, Inc., on May 16, 1966, received a franchise to serve natural gas to the City of Vevay. On October 17, 1966, Vevay Silgas, Inc., assigned this franchise to Applicant.

The total estimated annual and peak day natural gas requirements of Applicant for service to the City of Vevay and environs in the third year are 109,703 and 1,138 Mcf, respectively. Applicant will purchase said natural gas requirements from Respondent under Respondent's FPC Rate Schedule SG-4. All volumes stated are at a measurement pressure base of 14.73 psia.

The total estimated cost of Applicant's proposed facilities for the first year of operation is $230,645. Of this estimated cost, $128,000 is for transmission facilities. Applicant proposes to finance the subject project through the sale of 25-year mortgage bonds and equity securities to its parent, Silgas Corporation.

On December 9, 1966, Respondent filed an answer to the instant application stating that it has no objection to the issuance of an order by the Commission as requested by Applicant, provided that Applicant's estimated third-year requirements are not exceeded and that Applicant executes a service agreement acceptable to Respondent within forty-five days after the issuance of this order, such service agreement to be effective upon commencement of deliveries.

After due notice, no petition to intervene, notice of intervention or protest has been filed herein.

*The Commission finds:*

(1) Respondent, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949 in Docket No. G-859 (8 FPC 228).

(2) Applicant, Switzerland County Natural Gas Company, a corporation organized and existing under the laws of the State of Indiana, is authorized to construct and operate facilities and distribute and sell natural gas as proposed.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 1,138 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 1,138 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

### ORDER ACCEPTING QUALITY STATEMENTS

(Issued January 6, 1967)

The producers listed in Appendix B have tendered quality statements in compliance with Opinion Nos. 468 and 468-A, 34 FPC 159, 1068. These quality statements, which have been agreed to by the respective purchasers, relate to sales to Transwestern Pipeline Company (Transwestern), certain sales by Atlantic Richfield Company (Atlantic) and Phillips Petroleum Company (Phillips) to Northern Natural Gas Company (Northern), and certain sales by Samedan Oil Corporation (Samedan) and Sinclair Oil & Gas Company (Sinclair) to El Paso Natural Gas Company (El Paso).

Quality statements for each of the subject sales to Transwestern, with the exception of two quality statements, were accepted by orders issued June 13 and 30, 1966, in Docket No. AR61-1, *et al.*, 35 FPC 960, 1171, with respect to the proposed quality deductions, but the quality statements accepted by the June 13 order were rejected insofar as upward price adjustments were proposed for delivery pressures exceeding 500 psig and for Btu content between 1000 and 1050 Btu/cu. ft. The improper adjustments have been eliminated in the revised quality statements. These quality statements also reflect revised unit cost adjustments for treating sour gas, dehydration, and removal of carbon dioxide. Transwestern was also required for the first time to compute a compression cost. The resulting unit costs are set forth in Appendix A.

Atlantic and Phillips have submitted revised quality statements relating to sales under two rate schedules which involve treatment for removal of carbon dioxide at Northern's Mitchell Plant. Phillips has also tendered quality statements relating to sales under two rate schedules where the gas is compressed and/or dehydrated by Northern at its Plymouth Plant. The quality statements originally submitted for these sales reflected disagreement with Northern. The cost deductions agreed upon in the revised quality statements are set forth in Appendix A.

The quality statements tendered herein substantially conform with the requirements of Opinion Nos. 468 and 468-A and we shall therefore accept them.

Northern has attached a condition to its agreement to the applicable cost deductions at its Mitchell and Plymouth Plants to the effect that if at any time the actual costs at such plants are not allowed in its cost of service, then its agreement is to terminate.

In discussing agreements respecting quality deductions for processing costs, we stated in Opinion No. 468–A (p. 1071) that "we will approve all such agreements which reflect a good faith effort to approximate the processing costs involved, and accept for the pipelines' rate purposes the adjustments computed thereunder. * * * No pipeline need fear that any such agreement will prejudice its claims to its legitimate costs not covered by the agreement." We further stated in our order of June 13, 1966, accepting certain quality statements in Docket No. AR61–1, *et al.*, that "the various methods reflect a good faith effort to approximate the costs involved and represent practical solutions to the variety of problems encountered by the different parties."

While we have no authority to bind our successors and must reject the condition to Northern's agreement, we intend that good faith agreements approved by the Commission will not preclude a pipeline from recovering its legitimate costs in a rate proceeding.

The quality statements relating to sales by Samedan to El Paso were filed in response to Commission orders requiring the elimination of proposed upward price adjustments for gas delivered in excess of 500 psig and for Btu content between 1000 and 1050. Such adjustments were proposed originally as credits to offset treating cost deductions. The improper adjustments have been eliminated in the subject quality statements, and therefore the quality statements are acceptable.

The quality statement filed by Sinclair as successor to Albert Gackle (Gackle) relates to a sale of pipeline quality gas to El Paso. Gackle has not filed a quality statement.

Acceptance of the subject quality statements disposes of all quality statements filed by producers in *Permian* through August 31, 1966. It is thus possible at this time to determine more accurately the impact of these quality adjustments in the Permian area. The impact of these quality adjustments, inclusive of Btu adjustments, for old gas-well gas and old residue gas deliveries in 1960 is 0.78¢ and 0.86¢ per Mcf, respectively.[1]

*The Commission orders:*

(A) The quality statements listed in Appendix B are accepted.

(B) The conditions attached by Northern to its agreement to the cost deductions involved here are rejected.

APPENDIX A

| | Transwestern | Northern |
|---|---|---|
| $CO_2$ Removal on Residue Volume Basis | 2.25¢ per Mcf (28% less 3%) | 1.76¢ per Mcf (28% less 3%). |
| Sour Gas 1% Basis | 0.51¢ per Mcf | |
| Dehydration | 0.1¢ per Mcf | 0.14¢ per Mcf at Plymouth Plant. |
| Compression | 0.32¢ per Mcf 374–500 psig | 2.71¢ per Mcf 40–500 psig at Plymouth Plant. |

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[1] These figures were computed using 1960 volumes from Exhibit No. 118 in the *Permian* proceeding and the finally agreed upon adjustments reflected in approved quality statements. The computations appear in Appendices D and E to this order. The quality adjustments for new gas-well gas and residue gas derived therefrom are set forth in Appendix C.

## APPENDIX B

| Filing company | Rate schedule No. | Supplement No. |
|---|---|---|
| A. QUALITY STATEMENTS FOR SALES OF GAS TO TRANSWESTERN PIPELINE COMPANY | | |
| Atlantic Richfield Company | 232 | 1 to 1 |
| Perry R. Bass (Operator), *et al* | 6 | [1] 1 to 9 |
| Do | 6 | [2] 1 to 10 |
| Do | 6 | [3] 1 to 11 |
| Do | 6 | [4] 1 to 12 |
| Do | 6 | [5] 1 to 13 |
| Gulf Oil Corporation | [10] 342 | 1 to 7 |
| Do | [10] 342 | [6] 1 to 8 |
| Cabot Corporation (Operator) (SW) | 44 | [1] 1 to 4 |
| Do | 44 | [2] 1 to 5 |
| Do | 49 | [1] 1 to 2 |
| Do | 49 | [2] 1 to 3 |
| Continental Oil Company | 176 | 1 to 3 |
| Continental Oil Company (Operator), *et al* | 180 | 1 to 5 |
| Do | 180 | 1 to 6 |
| Gulf Oil Corporation (Operator), *et al* | 193 | 1 to 18 |
| Gulf Oil Corporation | 192 | 11 |
| Do | 194 | 1 to 9 |
| Do | 197 | 1 to 12 |
| Do | 213 | 1 to 7 |
| Do | 215 | 1 to 7 |
| Humble Oil & Refining Company | 276 | 1 to 4 |
| Do | 276 | 1 to 5 |
| Alexander G. Kasper and Frank Kell Cahoon (Operator), *et al* | 1 | 1 to 5 |
| Marathon Oil Company | 51 | 1 to 4 |
| Do | 63 | 1 to 2 |
| Do | 79 | 1 to 4 |
| Martin, Williams & Judson (Operator), *et al* | 3 | 5 |
| McCulloch Oil Corporation of California, *et al* | 3 | 1 to 1 |
| Mobil Oil Corporation | 226 | 1 to 9 |
| Do | 227 | 1 to 15 |
| Do | 228 | 1 to 9 |
| Do | 256 | 1 to 4 |
| Mobil Oil Corporation (Operator), *et al* | 260 | 1 to 3 |
| Monsanto Company | 39 | 1 to 3 |
| Northern Natural Gas Producing Company | 18 | 1 to 2 |
| Pan American Petroleum Corporation | 279 | 1 to 5 |
| Do | 329 | 1 to 3 |
| Phillips Petroleum Company | 368 | 3 |
| Do | 374 | 2 |
| Do | 374 | 3 |
| Shell Oil Company | 251 | 1 to 7 |
| Do | 255 | 1 to 7 |
| Sinclair Oil & Gas Company | 199 | 1 to 4 |
| Do | 214 | 1 to 6 |
| Do | 214 | 1 to 6 |
| Standard Oil Company of Texas, a division of Chevron Oil Company | 21 | 1 to 3 |
| Do | 22 | 1 to 5 |
| Do | 23 | 1 to 4 |
| Do | 24 | 1 to 4 |
| Do | 25 | 1 to 4 |
| Sun Oil Company | 124 | 1 to 5 |
| Do | 132 | 1 to 4 |
| Texaco Inc. | 227 | [7] 1 to 5 |
| Union Texas Petroleum, a division of Allied Chemical Corporation | 80 | 1 to 12 |
| Warren Petroleum Corporation (Operator) | 50 | 1 to 5 |
| B. QUALITY STATEMENTS FOR SALES OF GAS TO NORTHERN NATURAL GAS COMPANY | | |
| Phillips Petroleum Company | 18 | [8] 43 and [9] 44 |
| Atlantic Richfield Company | 149 | [8] 7 |
| Phillips Petroleum Company | 386 | 4 |
| C. QUALITY STATEMENTS FOR SALES OF GAS TO EL PASO NATURAL GAS COMPANY | | |
| Samedan Oil Corporation | 1 | 1 to 9 |
| | 3 | 1 to 11 |
| Sinclair Oil & Gas Company | 347 | 2 |

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[1] Applicable to residue gas not derived from new gas-well gas.

[2] Applicable to residue gas derived from new gas-well gas.

[3] Applicable to old gas-well gas (Crawer Fld.).

[4] Old gas-well gas (Bell Lake Fld., Devonian Formation).

[5] Old gas-well gas (Bell Lake Fld., Pennsylvanian Formation).

[6] Applies to new gas-well gas from acreage added per amendatory agreement dated 10-28-64.

[7] Applicable to original acreage dedicated under the contract. Quality Statement for acreage added per Supplement No. 3 ("New" gas-well gas) not filed.

[8] Applicable to Mitchell Plant.

[9] Applicable to Plymouth Plant.

[10] Tentative designation. Formerly British-American Oil Producing Company FPC Gas Rate Schedule No. 35.

## APPENDIX C

### *New Gas-Well Gas and Residue Gas Derived Therefrom*

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) |
|---|---|---|
| Amerada Petroleum Corporation | **30-B | [7] [9] −0.75 |
| Do | 67 | [9] −0.11 |
| Do | 101 | [9] +2.10 |
| Do | 125 | [10] +0.11 |
| Do | 126 | [9] +0.81 |
| Anadarko Production Company | 115 | (9) |
| Atlantic Richfield Company | 229 | [9] −0.11 |
| Do | 232 | [9] +0.42 |
| Do | 262 | [9] −0.11 |
| Do | 275 | (10) |
| Do | 276 | [9] −0.12 |
| Do | 286 | (9) |
| Do | 289 | [9] −0.84 |
| Do | 290 | [9] +1.75 |
| Do | ***296 | (9) |
| Perry R. Bass | **1 | [9] −2.25 |
| Do | **6 | [9] −0.25 |
| Cabot Corporation (SW) | *49-B | [9] −0.23 |
| Cities Service Oil Company | 195 | [9] −0.84 |
| Continental Oil Company | 167 | [9] −0.88 |
| Do | **190 | [9] +0.84 |
| Do | 233 | [9] −0.12 |
| Do | 283 | [9] −0.10 |
| Do | 308 | (9) |
| Depco, Inc.[5] | ***11 | (9) |
| Robert N. Enfield | ***3-B | (9) |
| Forest Oil Corporation | **38 | [9] −0.12 |
| Frio-Tex Oil & Gas Company | **2 | (9) −0.09 |
| Gulf Oil Corporation | 225 | [9] +1.31 |
| Do | 231 | (9) |
| Do | 240 | [10] −0.25 |
| Do | 244 | [10] −1.40 |
| Do | 250 | (10) |
| Do | 308 | (9) |
| Do | [1] 342 | [9] −0.10 |
| Do | [2] 367 | [9] −0.84 |
| Humble Oil & Refining Company | [3] 276 | [11] −0.10 |
| Do | [4] 276 | [11] −0.55 |
| Do | **294 | (9) |
| Do | 308 | [9] +0.09 |
| Do | **330 | [9] −0.40 |
| Do | 344 | [9] +1.63 |
| Do | 353 | [9] +2.04 |
| Do | 365 | (9) |
| Do | 375 | [9] +0.53 |
| Hunt Industries | 5 | [9] −2.25 |
| Hunt Oil Company | 61 | [9] −2.25 |
| Curtis R. Inman | ***2 | (9) |
| Alexander G. Kasper & Frank Kell Cahoon (Operator), *et al* | **1 | [9] +1.22 |
| Kerr-McGee Corporation | 86 | (9) |
| Ralph Lowe | ***5 | (9) |
| Martin, Williams & Judson | **3 | [11] +0.34 |
| Marathon Oil Company | 63 | [9] +0.15 |
| Do | 79 | [9] +0.34 |
| Do | **95 | (9) |
| Midwest Oil Corporation | 32 | (10) |
| Do | 34 | [9] +0.52 |
| Do | 37 | [9] +1.86 |
| Mobil Oil Corporation | **260 | [9] +0.42 |
| Do | 308 | (9) |
| Do | 315 | [9] −0.34 |
| Do | 336 | (10) |
| Do | 341 | (9) |
| Do | **368 | [9] +0.94 |
| Monsanto Company | 81 | (10) |
| Do | 82 | (9) |
| Northern Natural Gas Producing Company | 22 | [9] −0.10 |
| Odessa Natural Gasoline Company | 6 | [10] −0.11 |
| Pan American Petroleum Corporation | 321 | [9] +0.75 |
| Do | 329 | [9] +0.42 |
| Do | 369 | [9] +0.50 |
| Do | 402 | [9] −0.84 |
| Do | 418 | [9] +0.53 |

See footnotes at end of table.

APPENDIX C—continued

*New Gas-Well Gas and Residue Gas Derived Therefrom*—Continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) |
|---|---|---|
| Penroc Oil Corporation | 1 | (8) |
| Penzoil Company | **13 | (9) |
| Phillips Petroleum Company | *7 | 9 −2.22 |
| Do | *9 | 9 −2.89 |
| Do | 10 | 9 −0.23 |
| Do | **32 | 9 −2.01 |
| Do | **33 | 9 −2.01 |
| Do | *64 | 9 −2.96 |
| Do | 66 | (8) |
| Do | *243 | 9 −1.52 |
| Do | *359 | 9 +0.16 |
| Do | *363 | 9 −3.18 |
| Do | 3 374 | 11 −0.10 |
| Do | 4 374 | 11 −0.52 |
| Do | 381 | 9 +0.39 |
| Do | *386 | 9 −0.14 |
| Do | 387 | 9 −0.09 |
| Do | 397 | 9 −0.02 |
| Do | 404 | 9 −0.59 |
| Do | *406 | (8) |
| Do | *410 | 9 +0.24 |
| Potash Company of America | **1 | (8) |
| Samedan Oil Corporation | 10 | (8) |
| J. E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company | 65 | 9 +0.47 |
| Do | 82 | 9 −0.84 |
| Shell Oil Company | 249 | 9 −2.25 |
| Do | 3 251 | 11 −0.10 |
| Do | 4 251 | 11 −0.61 |
| Do | 253 | 10 −0.02 |
| Do | 273 | 9 +0.69 |
| Do | 311 | 9 −0.10 |
| Do | *315 | 9 +0.94 |
| Do | 318 | (8) |
| Do | 319 | 9 −2.25 |
| Do | 323 | 9 +0.53 |
| Signal Oil & Gas Company | **11 | 9 −0.09 |
| Sinclair Oil & Gas Company | 51 | 12 −0.31 |
| Do | *166 | 9 −0.08 |
| Do | 214 | 9 +0.17 |
| Do | 215 | 10 −0.45 |
| Do | 221 | 9 −2.25 |
| Do | 223 | 9 +0.69 |
| Do | **261 | 9 −0.02 |
| Do | 265 | 10 −0.44 |
| Do | 290 | (8) |
| Do | 334 | 9 +1.87 |
| Do | 344 | (8) |
| Skelly Oil Company | **187 | (10) |
| Do | 203 | 9 +0.75 |
| Do | 205 | (10) |
| Sohio Petroleum Company | 107 | 9 −0.72 |
| Marion E. Spitler | 1 | (8) |
| Standard Oil Company of Texas, a division of Chevron Oil Company | 32 | 9 +1.63 |
| Do | 35 | (8) |
| Do | 41 | (8) |
| Sun Oil Company | 132 | 9 +0.32 |
| Do | 143 | 9 +0.94 |
| Do | 150 | 9 +2.10 |
| Do | 151 | 9 −2.25 |
| Do | 174 | (8) |
| Do | 176 | 9 −0.84 |
| Do | 178 | 9 −0.11 |
| Do | 185 | (8) |
| Sunray DX Oil Company | 231 | (10) |
| Do | 286 | 9 +0.79 |
| The Superior Oil Company | 115 | (8) |
| Do | 116 | (10) |
| Texaco Inc. | 246 | 10 −0.78 |
| Do | 254 | 10 −1.24 |
| Do | *323 | 9 +0.28 |
| Do | 335 | 9 +2.24 |
| Do | 349 | 9 +0.94 |
| Do | 350 | 10 +0.45 |
| Do | 354 | (8) |
| Do | 360 | 9 +0.52 |

See footnotes at end of table.

## APPENDIX C—continued

### *New Gas-Well Gas and Residue Gas Derived Therefrom*—Continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) |
|---|---|---|
| Texas American Oil Corporation | **2 | [8] +0.83 |
| Do | 3 | [8] +0.52 |
| Do | 4 | [8] +0.52 |
| Tidewater Oil Company | 138 | [8] +1.89 |
| Do | 144 | ([6]) |
| John H. Trigg, d/b/a John H. Trigg Company | 4 | ([6]) |
| Union Oil Company of California | 94 | ([9]) |
| Do | 96 | ([6]) |
| Do | 97 | [9] −2.25 |
| Do | 154 | [10] +1.11 |
| Union Texas Petroleum, a division of Allied Chemical Corporation | ***74 | [10] −0.33 |
| Warren Petroleum Company | 54 | [6] +0.32 |
| Harvey E. Yates | ***1 | ([6]) |

*Operator.
**Operator, *et al.*
****Et al.*

[1] Formerly The British-American Oil Producing Company FPC Gas Rate Schedule No. 35.

[2] Formerly The British-American Oil Producing Company FPC Gas Rate Schedule No. 65.

[3] Insofar as gas produced from the Pennsylvanian Formation.

[4] Insofar as gas produced from the Devonian Formation.

[5] Formerly International Oil & Gas Corporation FPC Gas Rate Schedule No. 11.

[6] Related area base rate (rounded to two decimals) is 16.66 cents per Mcf.

[7] Related area base rate (rounded to two decimals) is 16.60 cents per Mcf.

[8] Related area base rate (rounded to two decimals) is 16.55 cents per Mcf.

[9] Related area base rate (rounded to two decimals) is 16.50 cents per Mcf.

[10] Related area base rate (rounded to two decimals) is 16.58 cents per Mcf.

[11] Related area base rate (rounded to two decimals) is 16.59 cents per Mcf.

[12] Related area base rate (rounded to two decimals) is 16.61 cents per Mcf.

The applicable area ceiling rate for each sale can be determined by adding or subtracting, as indicated, applicable quality adjustments shown in column (3) of the appendix.

## APPENDIX D—*Old Gas-Well Gas*

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5)=(3)×(4)<br>(5) |
|---|---|---|---|---|
| Amerada Petroleum Corporation | 1 | [3]−0.35 | 1,180,837 | −4,133 |
| Do | 27 | [3]+0.82 | 73,827 | +605 |
| Do | **30 | [4]−0.75 | 4,630,465 | −34,728 |
| Do | 31 | [3]−0.90 | 14,351 | −129 |
| Do | 51 | [3]−0.22 | 302,917 | −666 |
| Do | 55 | [3]−0.24 | 51,424 | −123 |
| Do | 56 | [3]−0.24 | 51,424 | −123 |
| Do | **57 | [3]−0.44 | 534,504 | −2,352 |
| Do | 62 | [3]+0.82 | 1,679,008 | +13,768 |
| Do | 67 | [6]−0.11 | 392,406 | −432 |
| Do | 69 | [3]+0.82 | 39,586 | +325 |
| Do | 72 | [3]+0.82 | 7,171 | +59 |
| Atlantic Richfield Company | **9 | [7]−0.78 | 646,215 | −5,040 |
| Do | 11 | [3]−1.25 | 140,765 | −1,760 |
| Do | 15 | [3]−1.24 | 29,710 | −368 |
| Do | 17 | [3]−1.24 | 44,323 | −550 |
| Do | 18 | [3]+0.09 | 3,277 | +2 |
| Do | 19 | [3]−1.30 | 84,725 | −1,102 |
| Do | 20 | [3]−0.32 | 4,878,929 | −15,613 |
| Do | 29 | [6]−0.81 | 255,808 | −2,073 |
| Do | 139 | [3]−0.32 | 102,680 | −329 |
| Do | [1] 149 | [6]−1.86 | 3,862,157 | −71,836 |
| Do | [2] 149 | [6]−0.14 | 1,505,113 | −2,107 |
| Do | 183 | [6]+1.56 | 23,143 | +361 |
| Do | 243 | [3]−2.61 | 29,594 | −772 |
| Do | 248 | [8]−0.2489 | 148,922 | −370 |
| Aztec Oil & Gas Company | 6 | [3]−0.15 | 16,761 | −25 |

See footnotes at end of table.

### APPENDIX D—*Old Gas-Well Gas*—continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5)=(3)×(4)<br>(5) |
|---|---|---|---|---|
| Perry R. Bass | **6 | [6]+0.17 | 47,851 | +81 |
| F. A. Callery, Inc. | ***8 | [6]−0.26 | 122,831 | −319 |
| Champlin Petroleum Company | 78 | [6]−0.11 | 1,954,149 | −2,150 |
| Cities Service Oil Company | 18 | [3]−0.82 | 1,991,489 | −16,330 |
| Do | **19 | [3]−1.30 | 212,860 | −2,767 |
| Do | 20 | [3]−1.10 | 265,531 | −2,921 |
| Do | 21 | [3]−0.44 | 103,245 | −454 |
| Do | 22 | [3]−1.40 | 36,601 | −512 |
| Do | 23 | [3]−1.62 | 5,932 | −96 |
| Do | 24 | [3]−2.21 | 134,479 | −3,972 |
| Do | 26 | [3]−1.87 | 756 | −14 |
| Do | 27 | [3]−0.61 | 65,993 | −403 |
| Do | 28 | [3]−1.40 | 5,751 | −81 |
| Do | 32 | [7]−0.57 | 1,520,017 | −8,664 |
| Do | **51 | [6]−0.39 | 858,629 | −3,349 |
| Do | 52 | [6]−0.20 | 12,161 | −24 |
| Do | 124 | [6]−0.11 | 772,072 | −849 |
| Do | 135 | [3]−1.24 | 174,636 | −2,165 |
| Do | 177 | [6]−0.81 | 688,852 | −5,579 |
| Continental Oil Company | **85 | [3]−0.32 | 4,933,450 | −15,787 |
| Do | **92 | [3]−0.15 | 7,173 | −11 |
| Do | **104 | [3]−0.90 | 3,811 | −34 |
| Do | **109 | [3]−0.37 | 2,416,730 | −8,942 |
| Do | 146 | [6]+0.14 | 126,499 | +177 |
| Do | *160 | [6]−0.11 | 651,068 | −716 |
| Do | 163 | [3]−0.78 | 28,029 | −219 |
| Do | 167 | [6]−0.8849 | 31,722 | −281 |
| Do | 176 | [6]+0.17 | 175,430 | +298 |
| Do | 276 | [3]−1.10 | 13,199 | −145 |
| General Crude Oil Company | 6 | [3]−0.78 | 11,686 | −91 |
| Getty Oil Company | 3 | [8]+0.3292 | 72,015 | +238 |
| Do | 5 | [6]−0.78 | 14,247 | −111 |
| Gulf Oil Corporation | 12 | [6]+1.42 | 327,904 | +4,656 |
| Do | **15 | [3]−0.66 | 26,143,999 | −172,550 |
| Do | 16 | [3]−0.33 | 2,142,903 | −7,071 |
| Do | 48 | [3]−0.22 | 188,240 | −414 |
| Do | 56 | [3]−0.32 | 1,706,834 | −5,462 |
| Do | 118 | [3]−0.52 | 249,372 | −1,297 |
| Do | 119 | [3]−0.78 | 459,168 | −3,581 |
| Do | 138 | [6]−0.11 | 1,820,697 | −2,003 |
| Do | 143 | [3]+0.82 | 151,198 | +1,240 |
| Do | 144 | [3]+0.09 | 382,950 | +345 |
| Do | 192 | [6]−5.71 | 12,454,499 | −711,151 |
| Do | **193 | [6]+0.23 | 2,403,148 | +5,527 |
| Do | 194 | [6]−0.10 | 1,018,277 | −1,018 |
| Do | 197 | [6]−0.13 | 1,638,730 | −2,131 |
| Do | 326 | [6]−0.81 | 535,171 | −4,335 |
| Do | 345 | [6]−0.74 | 220,221 | −1,630 |
| Humble Oil & Refining Company | 9 | [6]−0.39 | 74,757 | −292 |
| Do | 28 | [3]−0.70 | 547,337 | −3,831 |
| Do | 31 | [3]+0.24 | 6,029,115 | +14,469 |
| Do | 33 | [3]−1.87 | 5,378 | −101 |
| Do | 45 | [3]−1.40 | 41,964 | −587 |
| Do | *132 | [6]−0.11 | 13,857,029 | −15,243 |
| Do | **138 | [6]−0.10 | 297,796 | −298 |
| Do | 159 | [6]−0.84 | 283,762 | −2,384 |
| Do | 160 | [6]−0.56 | 542,771 | −3,040 |
| Do | 259 | [6]+0.02 | 218,046 | +44 |
| Caroline Hunt Trust Estate | 2 | [6]−0.10 | 107,692 | −108 |
| Hunt Oil Company | 33 | [6]+1.14 | 522,475 | +5,957 |
| H. L. Hunt | 6 | [6]+0.13 | 122,284 | +159 |
| Do | 15 | [6]+1.14 | 138,691 | +1,581 |
| Do | 21 | [6]−0.26 | 160,505 | −417 |
| Do | 27 | [6]+1.14 | 51,355 | +586 |
| Lamar Hunt | 1 | [3]+0.55 | 38,933 | +214 |
| Do | 5 | [3]+0.55 | 62,775 | +345 |
| N. B. Hunt | 1 | [3]+0.55 | 77,866 | +428 |
| Do | 9 | [3]+0.55 | 125,549 | +691 |
| W. H. Hunt | 1 | [3]+0.55 | 38,933 | +214 |
| Do | 6 | [3]+0.55 | 62,775 | +345 |
| Marathon Oil Company | **4 | [7]−0.0407 | 3,315,999 | −1,349 |
| Do | 5 | [3]+0.55 | 512,995 | +2,821 |
| Do | 6 | [3]−0.65 | 267,127 | −1,736 |
| Do | 27 | [3]−1.03 | 20,039 | −206 |
| Do | 51 | [6]+0.31 | 216,001 | +670 |

See footnotes at end of table.

APPENDIX D—*Old Gas-Well Gas*—continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5)=(3)×(4)<br>(5) |
|---|---|---|---|---|
| Midwest Oil Corporation | **12 | [6] −0.18 | 86,934 | −157 |
| Mobil Oil Corporation | *17 | [6] +0.41 | 1,240,160 | +5,085 |
| Do | 19 | [6] +1.14 | 70,761 | +806 |
| Do | *80 | [3] −0.78 | 10,974 | −85 |
| Do | 86 | [3] −0.33 | 4,883 | −16 |
| Do | 90 | [3] −0.26 | 359,114 | −934 |
| Do | 92 | [3] −0.33 | 17,297 | −57 |
| Do | 144 | [6] +1.14 | 219,729 | +2,505 |
| Do | 201 | [6] −0.11 | 850,737 | −936 |
| Do | 208 | [3] −1.62 | 4,481 | −73 |
| Do | **209 | [3] −1.40 | 5,093 | −71 |
| Do | 210 | [3] −1.87 | 886 | −17 |
| Do | 211 | [3] −2.85 | 663 | −18 |
| Do | **241 | [6] −2.21 | 153,874 | −3,400 |
| Monsanto Company | 12 | [6] −0.28 | 315,187 | −882 |
| Do | 39 | [6] −0.10 | 134,230 | −134 |
| Northern Natural Gas Producing Company | 18 | [6] −0.10 | 31,733 | −31 |
| Pan American Petroleum Corporation | 20 | [6] −0.81 | 251,821 | −2,040 |
| Do | 101 | [3] +0.09 | 1,949 | +2 |
| Do | 110 | [3] −0.32 | 4,748,476 | −15,195 |
| Do | 120 | [3] −1.60 | 1,096,130 | −17,537 |
| Do | 123 | [3] −0.48 | 3,234,370 | −15,524 |
| Do | **136 | [3] −0.26 | 911,246 | −2,369 |
| Do | 191 | [6] −0.86 | 17,384 | −150 |
| Do | 214 | [6] +0.90 | 170,823 | +1,537 |
| Do | **220 | [6] −0.11 | 10,929,768 | −12,023 |
| Do | 234 | [3] −1.24 | 398,159 | −4,937 |
| Do | 249 | [3] −0.32 | 1,856,242 | −5,940 |
| Do | 271 | [3] +0.44 | 13,367 | +59 |
| Do | 279 | [6] −0.08 | 70,044 | −56 |
| Phillips Petroleum Company | [1] 18 | [6] −1.86 | 24,499,916 | −455,698 |
| Do | [2] 18 | [6] −0.14 | 5,204,095 | −7,285 |
| Do | 47 | [6] [10] +1.42 | 325,091 | +4,616 |
| Do | 59 | [9] −0.7215 | 563,392 | −4,064 |
| Do | **65 | (3) | 569,659 | --- |
| Do | 151 | [3] +0.55 | 126,184 | +694 |
| Do | 260 | [6] −0.86 | 21,323 | −183 |
| Do | **274 | [3] −0.32 | 227,990 | −730 |
| Do | 306 | [6] −0.14 | 7,707,671 | −10,791 |
| Do | 358 | [6] −0.86 | 47,268 | −407 |
| Do | 368 | [6] −0.10 | 108,799 | −109 |
| Pioneer Production Corporation | 2 | [6] +0.75 | 86,721 | +650 |
| Samedan Oil Corporation | **1 | [3] −0.32 | 332,032 | −1,063 |
| Do | **2 | [3] +0.55 | 615,908 | +3,387 |
| Do | **3 | [3] +0.44 | 104,089 | +458 |
| Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company | 11 | [6] −0.81 | 128,160 | −1,038 |
| Do | 13 | [3] −0.61 | 10,467,115 | −63,849 |
| Do | 17 | [3] +0.82 | 213,419 | +1,750 |
| Do | *19 | [6] −0.11 | 4,178,793 | −4,597 |
| Do | 27 | [6] +0.41 | 158,061 | +649 |
| Do | **28 | [3] −0.51 | 48,098 | −245 |
| Do | 37 | [6] −4.30 | 52,728 | −2,267 |
| Do | 38 | [3] −0.32 | 17,024 | −54 |
| Do | **40 | [3] −0.56 | 741,022 | −4,150 |
| Do | **42 | [3] −1.00 | 1,516,560 | −15,166 |
| Do | **43 | [3] −0.32 | 393,284 | −1,259 |
| Do | **44 | [3] −0.21 | 189,120 | −397 |
| Do | **50 | (6) | 172 | --- |
| Do | 56 | [3] −1.24 | 45,154 | −560 |
| Do | 57 | [3] −1.24 | 1,706 | −21 |
| Do | **58 | [3] −0.12 | 2,672,171 | −3,206 |
| Do | 59 | [3] −0.32 | 88,109 | −282 |
| Secure Trusts | 3 | [6] +1.14 | 91,913 | +1,048 |
| Shell Oil Company | 16 | [6] +0.28 | 1,781,893 | +4,989 |
| Do | 33 | [3] −0.61 | 16,603 | −101 |
| Do | 34 | [3] −0.46 | 321,874 | −1,481 |
| Do | 40 | [3] +0.55 | 145,143 | +798 |
| Do | 41 | [3] +0.11 | 3,981,020 | +4,379 |
| Do | 95 | [3] +0.82 | 71,983 | +590 |
| Do | 168 | [6] −0.11 | 14,192,970 | −15,612 |

See footnotes at end of table.

APPENDIX D—*Old Gas-Well Gas*—continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5)=(3)×(4)<br>(5) |
|---|---|---|---|---|
| **Sinclair Oil & Gas Company** | 8 | [3] +0.01 | 2,302,703 | +230 |
| Do | 51 | [9] −0.34 | 1,280,527 | −4,354 |
| Do | 65 | [3] −0.31 | 896,102 | −2,778 |
| Do | 71 | [3] −0.13 | 28,651 | −37 |
| Do | 83 | [3] −0.46 | 868,099 | −3,993 |
| Do | *145 | [6] +0.14 | 364,714 | +511 |
| Do | 170 | [3] +0.44 | 195,691 | +861 |
| Do | 254 | [3] −0.52 | 193,271 | −1,006 |
| Do | **265 | [3] −0.44 | 6,664,141 | −29,322 |
| Do | 286 | [6] −2.21 | 430,027 | −9,503 |
| Do | 299 | [5] −0.78 | 23,325 | −182 |
| **Skelly Oil Company** | 45 | [3] −0.52 | 243,084 | −1,264 |
| Do | 48 | [7] −0.9512 | 1,355,084 | −12,889 |
| Do | 58 | [3] −1.24 | 1,436 | −18 |
| Do | 60 | [3] +0.09 | 20,100 | +18 |
| Do | **78 | [3] −0.53 | 2,275,005 | −12,058 |
| Do | 132 | [6] +1.14 | 63,776 | +727 |
| Do | 159 | [6] −0.11 | 4,292,352 | −4,722 |
| **Southern Union Production Company** | 4 | [6] −0.86 | 64,072 | −551 |
| **Standard Oil Company of Texas, a Division of Chevron Oil Company** | 8 | (9) | 180,962 | ---------- |
| Do | 9 | [6] −0.55 | 109,225 | −601 |
| Do | 13 | [6] −2.61 | 18,047,340 | −471,035 |
| Do | 17 | [3] −0.15 | 3,811 | −6 |
| Do | 18 | [3] −0.15 | 7,173 | −11 |
| Do | **19 | [3] −0.32 | 4,807,750 | −15,384 |
| Do | 22 | [9] +0.27 | 287,041 | +775 |
| **Sun Oil Company** | 30 | [6] −0.81 | 197,221 | −1,598 |
| Do | 58 | [3] −0.56 | 872,730 | −4,887 |
| Do | 60 | [5] −0.9232 | 309,637 | −2,858 |
| Do | 61 | [3] −0.61 | 79,710 | −486 |
| Do | 65 | [6] −0.86 | 71,582 | −616 |
| Do | 94 | [6] −0.14 | 5,510,828 | −7,715 |
| **Sunray DX Oil Company** | 62 | [3] +0.09 | 1,309 | +1 |
| Do | 64 | [3] −0.13 | 131,097 | −170 |
| Do | 66 | [3] +0.2026 | 199,155 | +404 |
| Do | 95 | [3] +0.11 | 402,334 | +443 |
| Do | 101 | [3] +0.55 | 301,722 | +1,659 |
| Do | 103 | [6] +1.42 | 46,454 | +660 |
| Do | 142 | [3] −0.22 | 1,036,186 | −2,279 |
| Do | 149 | [3] +1.51 | 79,261 | +1,197 |
| **Texaco Inc** | 16 | [3] −0.7365 | 3,091,833 | −22,772 |
| Do | 23 | [6] −0.10 | 37,346 | −37 |
| Do | 24 | [6] +1.42 | 368,278 | +5,229 |
| Do | 28 | [3] −1.24 | 98,901 | −1,226 |
| Do | 29 | [3] −0.28 | 35,484 | −99 |
| Do | 30 | [3] +0.12 | 95,686 | +115 |
| Do | 31 | [3] +0.55 | 104,866 | +577 |
| Do | 169 | [6] −0.18 | 146,183 | −263 |
| Do | 179 | [6] −0.11 | 3,134,309 | −3,448 |
| **Tidewater Oil Company** | **38 | [3] −0.26 | 458,107 | −1,191 |
| Do | 39 | [3] −0.32 | 139,753 | −447 |
| Do | **43 | [3] +0.11 | 2,723,136 | +2,99 |
| Do | 67 | [6] −0.14 | 656,600 | −919 |
| Do | 76 | [3] −0.78 | 16,448 | −128 |
| Do | 79 | [6] −0.11 | 1,547,536 | −1,702 |
| **Union Oil Company of California** | 11 | [6] +0.83 | 230,565 | +1,914 |
| Do | 48 | [3] −0.10 | 139,333 | −140 |
| Do | 98 | [6] +1.42 | 309,837 | +4,400 |
| Do | 100 | [6] −0.39 | 418,545 | −1,632 |
| Do | 109 | [3] −1.23 | 52,031 | −640 |
| Do | 118 | [6] −0.11 | 3,447,728 | −3,793 |
| Do | 124 | [6] −0.09 | 900,260 | −810 |
| Do | 128 | [3] −0.32 | 622,520 | −1,992 |
| Do | 130 | [6] −3.37 | 119,603 | −4,031 |

See footnotes at end of table.

APPENDIX D—*Old Gas-Well Gas*—continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5) = (3) × (4)<br>(5) |
|---|---|---|---|---|
| Union Texas Petroleum, a Division of Allied Chemical Corporation | 13 | [6]+1.42 | 440,128 | +6,250 |
| Do | 18 | [6]−1.28 | 337,540 | −4,320 |
| Do | ***22 | [3]+0.09 | 1,640 | +1 |
| Do | ***38 | [3]−0.32 | 608,238 | −1,946 |
| Do | ***39 | [3]+0.33 | 42,790 | +141 |
| Do | 48 | [3]−0.32 | 272,371 | −872 |
| Do | **49 | [3]−0.30 | 414,622 | −1,244 |
| Do | **52 | [3]+0.55 | 23,915 | +132 |
| Total |  |  | 302,313,824 | 2,364,575 |
|  |  |  | Quality adjustment impact = 0.782 ¢/Mcf |  |

*Operator.
**Operator, et al.
***Et al.

[1] Applicable to gas produced from the Puckett-Ellenburger Formation.

[2] Applicable to gas produced from the Puckett-Devonian Formation.

[3] Related area base rate (rounded to two decimals) is 14.44 ¢/Mcf

[4] Related area base rate (rounded to two decimals) is 14.61 ¢/Mcf

[5] Related area base rate (rounded to two decimals) is 14.46 ¢/Mcf

[6] Related area base rate (rounded to two decimals) is 14.50 ¢/Mcf

[7] Related area base rate (rounded to two decimals) is 14.43 ¢/Mcf

[8] Related area base rate (rounded to two decimals) is 14.42 ¢/Mcf

[9] Related area base rate (rounded to two decimals) is 14.45 ¢/Mcf

[10] Applicable adjustment to September 12, 1966. Adjustment after September 12, 1966, is −0.37¢ per Mcf.

The applicable area ceiling rate for each sale can be determined by adding or subtracting, as indicated, the applicable quality adjustments shown in column (3) of the appendix.

APPENDIX E—*Old Residue Gas*

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5) = (3) × (4)<br>(5) |
|---|---|---|---|---|
| Amerada Petroleum Corporation | 3 | [12] +1.80 | 35,307 | +636 |
| Do | 4 | ([12]) | 728,951 | ---------- |
| Do | 32 | [11] +1.24 | 13,405 | +166 |
| Do | 33 | [11] +1.24 | 6,148 | +76 |
| Do | 34 | [11] +1.24 | 233,446 | +2,895 |
| Do | 35 | [11] +1.24 | 2,874 | +36 |
| Do | 36 | [11] +1.24 | 5,324 | +66 |
| Do | 37 | [11] +1.24 | 284,818 | +3,532 |
| Do | 38 | [11] +1.24 | 902,575 | +11,192 |
| Do | 39 | [11] +1.24 | 26,327 | +326 |
| Do | **40 | [11] +1.24 | 34,890 | +433 |
| Do | 47 | [11] +1.24 | 4,976 | +62 |
| Do | 68 | [11] +1.24 | 288,248 | +3,574 |
| Ashland Oil & Refining Company | **44 | ([12]) | 27,739 | ---------- |
| Atlantic Richfield Company | *10 | ([10]) | 510,041 | ---------- |
| Do | 12 | [11] +1.24 | 37,266 | +462 |
| Do | 13 | [11] +1.24 | 22,969 | +285 |
| Do | 26 | ([12]) | 623,352 | ---------- |
| Do | 28 | ([12]) | 838,942 | ---------- |
| Do | 62 | [11] +1.24 | 348,249 | +4,318 |
| Do | **132 | [11] +1.24 | 50,096 | +621 |
| Do | 140 | [12] −1.69 | 785,354 | −13,272 |
| Do | 168 | [11] +1.24 | 406,293 | +5,038 |
| Do | 191 | [12] +0.61 | 517,170 | +3,155 |
| Do | 193 | [11] +1.24 | 126,719 | +1,571 |
| Do | 207 | [12] +2.11 | 27,840 | +587 |
| Do | 208 | [12] +1.24 | 9,179 | +114 |
| Do | 240 | ([12]) | 299,957 | ---------- |
| Do | 255 | ([12]) | 24,848 | ---------- |
| Do | ***294 | ([12]) | 328 | ---------- |

See footnotes at end of table.

APPENDIX E—*Old Residue Gas*—continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5)=(3)×(4)<br>(5) |
|---|---|---|---|---|
| Perry R. Bass | **6 | [12] −0.24 | 5,337,889 | −12,811 |
| Cabot Corporation (SW) | 22 | [12] +1.80 | 11,721 | +211 |
| Do | 23 | [10] | 62,855 | ---------- |
| Do | 37 | [12] | 122,652 | ---------- |
| Do | 50 | [12] | 205,930 | ---------- |
| Champlin Petroleum Company | 50 | [12] +0.69 | 79,794 | +551 |
| Cities Service Oil Company | 38 | [11] +1.24 | 3,159 | +39 |
| Do | 39 | [11] +1.24 | 337,627 | +4,187 |
| Do | 40 | [11] +1.24 | 419,495 | +5,202 |
| Do | 41 | [11] +1.24 | 27,059 | +336 |
| Do | 43 | [12] | 970,457 | ---------- |
| Do | 57 | [11] +1.24 | 1,013 | +13 |
| Do | 58 | [11] +1.24 | 5,658 | +70 |
| Do | 59 | [11] +1.24 | 16,350 | +203 |
| Do | 60 | [11] +1.24 | 2,630 | +33 |
| Do | 61 | [11] +1.24 | 8,025 | +100 |
| Do | 62 | [11] +1.24 | 2,414 | +30 |
| Do | 63 | [11] +1.24 | 7,419 | +92 |
| Do | 64 | [11] +1.24 | 21,485 | +266 |
| Do | 65 | [11] +1.24 | 81,606 | +1,012 |
| Do | 66 | [11] +1.24 | 8,891 | +110 |
| Do | *105 | [12] −0.36 | 3,866,814 | −13,921 |
| Do | 203 | [11] +1.24 | 285,216 | +3,537 |
| Do | 205 | [11] +1.24 | 132,612 | +1,644 |
| Colorado Oil and Gas Corporation | 43 | [10] | 70,190 | ---------- |
| Continental Oil Company | 5 | [11] +1.24 | 17,840 | +221 |
| Do | 7 | [11] +1.24 | 281,502 | +3,491 |
| Do | **145 | [12] +1.69 | 59,807 | −1,011 |
| Do | *168 | [12] +0.55 | 1,072,577 | +5,899 |
| Do | 261 | [12] −1.69 | 10,110 | −171 |
| Dorchester Gas Producing Company | *3 | [12] +0.97 | 1,128,318 | +10,945 |
| Forest Oil Corporation | 5 | [10] | 28,316 | ---------- |
| Getty Oil Company | 1 | [12] | 230,029 | ---------- |
| Do | 2 | [11] +1.24 | 53,753 | +667 |
| Gulf Oil Corporation | 13 | [12] +0.14 | 733,781 | +1,027 |
| Do | 55 | [12] −0.40 | 63,671 | −255 |
| Do | **58 | [11] +1.24 | 264,860 | +3,284 |
| Do | **59 | [11] +1.24 | 31,193 | +387 |
| Do | **60 | [11] +1.24 | 1,325 | +16 |
| Do | **61 | [11] +1.24 | 40,222 | +499 |
| Do | **62 | [11] +1.24 | 23,363 | +290 |
| Do | 63 | [11] +1.24 | 2,288,706 | +28,380 |
| Do | 64 | [11] +1.24 | 880,856 | +10,923 |
| Do | 65 | [12] | 67,292 | ---------- |
| Do | 120 | [12] | 167,767 | ---------- |
| Do | 146 | [12] −1.69 | 1,864 | −31 |
| Do | [1] 324 | [12] +0.69 | 203,036 | +1,401 |
| Do | [1] 325 | [12] | 690 | ---------- |
| Humble Oil & Refining Company | 3 | [12] +1.80 | 234,135 | +4,214 |
| Do | **5 | [12] | 2,865,548 | ---------- |
| Do | 16 | [12] | 2,015,374 | ---------- |
| Do | 77 | [11] +1.24 | 100,709 | +1,249 |
| Do | 92 | [11] +1.24 | 252,461 | +3,131 |
| Do | **93 | [11] +1.24 | 265,093 | +3,287 |
| Do | 94 | [11] +1.24 | 202,553 | +5,212 |
| Do | 96 | [11] +1.24 | 39,798 | +493 |
| Do | 97 | [11] +1.24 | 100,770 | +1,250 |
| Do | 116 | [12] −1.69 | 345,237 | −5,834 |
| Do | 118 | [12] −0.40 | 110,892 | −444 |
| Do | **142 | [10] +1.93 | 764,612 | +14,757 |
| Do | 144 | [12] −0.40 | 9,496 | −38 |
| Do | 260 | [12] +1.70 | 1,610,930 | +27,386 |
| Do | 262 | [12] −0.40 | 183,971 | −73 |
| Do | 320 | [12] | 5,713 | ---------- |
| Hunt Oil Company | 7 | [12] | 163,333 | ---------- |
| Do | 31 | [12] +1.5 | 1,718,391 | +26,120 |
| Do | 33 | [12] −1.99 | 30,633 | −610 |
| Do | 34 | [12] −0.40 | 345,037 | −1,381 |
| Do | 36 | [12] −1.99 | 78,076 | −1,553 |
| Do | 48 | [12] −1.69 | 10,907 | −184 |
| H. L. Hunt | 16 | [12] −0.40 | 30,478 | −122 |
| Do | 28 | [12] −0.40 | 10,657 | −43 |
| Lamar Hunt | 3 | [11] +1.24 | 6,393 | +79 |
| Do | 4 | [11] +1.24 | 4,921 | +61 |
| N. B. Hunt | 4 | [11] +1.24 | 9,842 | +122 |
| Do | 5 | [11] +1.24 | 12,786 | +159 |
| W. H. Hunt | 4 | [11] +1.24 | 4,921 | +61 |
| Do | 5 | [11] +1.24 | 6,393 | +79 |

See footnotes at end of table.

APPENDIX E—*Old Residue Gas*—continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5)=(3)×(4)<br>(5) |
|---|---|---|---|---|
| MWJ Producing Company | ****1 | (12) | 1,098,878 | ------ |
| Do | ****2 | (12) | 36,980 | ------ |
| Do | ****4 | (12) | 59,191 | ------ |
| Do | ****5 | (12) | 253,303 | ------ |
| Marathon Oil Company | **7 | (10) | 121,479 | ------ |
| Martin, Williams & Judson | **1 | (12) | 74,901 | ------ |
| Do | ***2 | (12) | 21,169 | ------ |
| Midwest Oil Corporation | 4 | (12) | 446,845 | ------ |
| Mobil Oil Corporation | **20 | (12) | 3,470,267 | ------ |
| Do | *26 | (12) | 2,391,152 | ------ |
| Do | *48 | [12]+0.83 | 3,524,873 | +29,256 |
| Do | [2]*48 | [12]+0.83 | 3,463 | +29 |
| Do | 76 | (12) | 364,967 | ------ |
| Do | 101 | [12]−0.29 | 206,479 | −599 |
| Do | 102 | (12) | 3,352,301 | ------ |
| Do | 103 | (12) | 2,420,324 | ------ |
| Do | 104 | [12]−0.40 | 186,382 | −746 |
| Do | 119 | (12) | 3,701 | ------ |
| Do | 131 | [12]−0.40 | 11,388 | −45 |
| Do | 133 | (12) | 20 | ------ |
| Do | 175 | (12) | 3,694 | ------ |
| Do | 235 | [11]+1.24 | 2,925 | +36 |
| Do | 280 | [12]+0.83 | 31,009 | +257 |
| Do | 346 | (12) | 14,669 | ------ |
| Do | 347 | (12) | 55,890 | ------ |
| Do | **348 | (12) | 69,868 | ------ |
| Do | **349 | (12) | 165,921 | ------ |
| Do | **350 | (12) | 384,480 | ------ |
| Do | 351 | (12) | 323,688 | ------ |
| Do | 353 | (12) | 51,134 | ------ |
| Do | **379 | (12) | 330,431 | ------ |
| Do | 384 | (12) | 62,781 | ------ |
| Monsanto Company | 5 | (12) | 154,023 | ------ |
| Murphy Oil Corporation | 11 | (12) | 46,858 | ------ |
| Northwest Production Corporation | *2 | [12]+0.14 | 2,611,371 | +3,656 |
| The Nueces Company | *3 | (12) | 9,649,844 | ------ |
| Odessa Natural Gasoline Company | 1 | (12) | 255,104 | ------ |
| Pan American Petroleum Corporation | **5 | [11]+1.24 | 161,992 | +2,009 |
| Do | 17 | [12]+1.80 | 50,028 | +901 |
| Do | *18 | (12) | 4,859,361 | ------ |
| Do | *21 | [12]−0.29 | 1,487,238 | −4,313 |
| Do | *23 | [12]+0.69 | 4,380,812 | +30,228 |
| Do | ***68 | [12]+1.70 | 45,793 | +778 |
| Do | 115 | [11]+1.24 | 231,964 | +2,876 |
| Do | 129 | (12) | 649,322 | ------ |
| Do | 168 | [11]+1.24 | 1,461,117 | +18,118 |
| Do | 218 | [12]−1.69 | 85,856 | −1,451 |
| Do | *313 | (12) | 4,430,263 | ------ |
| Do | *315 | (12) | 516,394 | ------ |
| Pecos Company | ***1 | [12]+0.14 | 2,382,523 | +3,336 |
| Do | *2 | [12]−2.68 | 1,385,244 | −37,125 |
| Do | 3 | (12) | 72,127 | ------ |
| Phillips Petroleum Company | *7 | [12]−2.26 | 14,399,470 | −325,426 |
| Do | 9 | [12]−2.91 | 10,157,353 | −295,579 |
| Do | 10 | [12]−0.21 | 1,393,305 | −2,926 |
| Do | [3] 18 | [12]−1.56 | 24,715,984 | −385,569 |
| Do | [4] 18 | [12]−2.85 | 5,473,540 | −155,996 |
| Do | [5] 18 | [12]−2.50 | 11,377,358 | −284,433 |
| Do | ** [6] 32 | [12]−2.07 | 15,722,427 | −325,454 |
| Do | ** [7] 32 | [12]−2.07 | 29,416,780 | −608,927 |
| Do | **33 | [12]−2.07 | 29,780,688 | −616,460 |
| Do | 46 | [11]+1.24 | 9,178 | +114 |
| Do | *64 | [10]−2.94 | 13,513,783 | −397,305 |
| Do | 66 | (10) | 190,294 | ------ |
| Do | * [8] 243 | [10]−1.54 | 6,441,191 | −99,195 |
| Do | * [9] 243 | [10]−1.54 | 12,438,794 | −191,557 |
| Do | **256 | (12) | 43,202 | ------ |
| Do | 258 | [11]+1.24 | 148,669 | +1,843 |
| Do | 309 | [12]−0.40 | 83,160 | −333 |
| Do | 315 | (12) | 146,803 | ------ |
| Do | 338 | [10]+1.93 | 437,624 | +8,446 |
| Do | *359 | [12]+0.14 | 1,222,310 | +1,711 |
| Do | *363 | [12]−3.18 | 1,463,458 | −46,538 |
| Placid Oil Company | 13 | (12) | 241,518 | ------ |
| Caroline Hunt Sands | ***4 | [11]+1.24 | 40,085 | +497 |

See footnotes at end of table.

APPENDIX E—*Old Residue Gas*—continued

| Producer (1) | Rate schedule No. (2) | Quality adjustments including Btu (+) or (−) (¢/Mcf) (3) | 1960 Sales volumes (Mcf) (4) | Total impact ($) (5)=(3)×(4) (5) |
|---|---|---|---|---|
| Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company | 14 | [12]+0.69 | 661,480 | +4,564 |
| Do | 15 | ([12]) | 14,246 | |
| Do | 20 | [12]−0.40 | 188,884 | −755 |
| Do | 29 | [11]+1.24 | 964,494 | +11,960 |
| Do | **39 | [11]+1.24 | 196,674 | +2,439 |
| Do | **45 | [11]+1.24 | 18,705 | +232 |
| Do | **46 | [11]+1.24 | 314,641 | +3,902 |
| Do | 47 | [11]+1.24 | 59,851 | +742 |
| Do | 48 | [11]+1.24 | 78,896 | +978 |
| Do | **51 | [11]+1.24 | 172 | +2 |
| Do | **52 | [11]+1.24 | 210,930 | +2,616 |
| Do | 53 | [11]+1.24 | 237,781 | +2,948 |
| Do | 55 | [11]+1.24 | 158,920 | +1,971 |
| Do | **61 | [11] +1.24 | 201,886 | +2,503 |
| Secure Trusts | 4 | [12] −0.40 | 22,481 | −90 |
| Shell Oil Company | 15 | [12] +1.75 | 3,480 | +61 |
| Do | 17 | [12] −0.38 | 1,699,982 | −6,460 |
| Do | 18 | [12] +1.08 | 226,210 | +2,443 |
| Do | *19 | [12] −1.01 | 10,593,151 | −106,991 |
| Do | 32 | [11] +1.24 | 22,708 | +282 |
| Do | 45 | [12] −1.87 | 6,717,869 | −125,624 |
| Do | 108 | ([10]) | 348,357 | |
| Do | 122 | [11] +1.24 | 32,843 | +407 |
| Do | 134 | [12] −1.69 | 739,941 | −12,505 |
| Do | 142 | ([12]) | 121,614 | |
| Do | 151 | ([12]) | 19,898 | |
| Do | 272 | [11] +1.24 | 118,416 | +1,468 |
| Do | 302 | [11] +1.24 | 90,215 | +1,119 |
| Do | 304 | [11] +1.24 | 226,930 | +2,814 |
| Do | 313 | [12] +1.24 | 35,807 | +444 |
| Signal Oil & Gas Company | **4 | [12] −1.69 | 65,740 | −1,111 |
| Do | ***7 | [12] −1.69 | 655 | −11 |
| Sinclair Oil & Gas Company | 7 | [12] +0.97 | 1,586,961 | +15,394 |
| Do | 28 | ([10]) | 287,498 | |
| Do | 70 | [11] +1.24 | 41,146 | +510 |
| Do | *90 | [12] −0.88 | 11,045,744 | −97,202 |
| Do | 92 | [12] −1.69 | 306,627 | −5,182 |
| Do | 136 | ([12]) | 8,935 | |
| Do | 148 | [11] +1.24 | 618,564 | +7,670 |
| Do | 153 | [11] +1.24 | 414,451 | +5,139 |
| Do | 158 | [12] −0.40 | 11,131 | −44 |
| Do | 163 | ([12]) | 80,185 | |
| Do | 166 | [12] +0.66 | 157,790 | +1,041 |
| Do | *168 | [10] −0.07 | 1,425,899 | −998 |
| Do | *222 | [10] −0.07 | 228,144 | −160 |
| Do | 266 | [11] +1.24 | 7,312 | +91 |
| Do | **271 | [11] +1.24 | 94,523 | +1,172 |
| Do | **274 | [11] +1.24 | 60,678 | +752 |
| Do | 275 | [11] +1.24 | 1,192,316 | +14,785 |
| Do | **277 | [11] +1.24 | 32,033 | +397 |
| Do | 307 | [12] −1.69 | 38,748 | −655 |
| Do | *317 | [12] +0.15 | 5,115,744 | +7,674 |
| Skelly Oil Company | *31 | [10] −0.63 | 3,237,536 | −20,397 |
| Do | **66 | [11] +1.24 | 1,248,048 | +15,476 |
| Do | **68 | [11] +1.24 | 849,261 | +10,531 |
| Do | 69 | [12] −0.29 | 9,040 | −26 |
| Do | 70 | [11] +1.24 | 325,330 | +4,034 |
| Do | 72 | [12] +0.44 | 1,242,428 | +5,467 |
| Do | *73 | [11] +0.5502 | 645,300 | +3,550 |
| Do | 74 | ([10]) | 168,595 | |
| Do | 77 | ([12]) | 123,082 | |
| Do | 89 | ([12]) | 1,076,069 | |
| Do | 113 | [12] −0.40 | 35,704 | −143 |
| Sohio Petroleum Company | **45 | ([12]) | 3,138,562 | |
| Do | ***77 | ([12]) | 71,130 | |
| Do | ***78 | ([12]) | 65,441 | |
| Do | ***79 | ([12]) | 94,290 | |
| Do | ***80 | ([12]) | 81,732 | |
| Do | ***81 | ([12]) | 124,516 | |
| Do | ***82 | ([12]) | 72,018 | |
| Do | ***83 | ([12]) | 17,568 | |
| Do | ***84 | ([12]) | 142,989 | |
| Do | **91 | ([12]) | 245,437 | |
| Do | 94 | ([12]) | 113,345 | |
| Do | ***95 | ([12]) | 171,212 | |
| Do | **97 | [12] −1.69 | 113,172 | −1,912 |

See footnotes at end of table.

APPENDIX E—*Old Residue Gas*—continued

| Producer<br>(1) | Rate schedule No.<br>(2) | Quality adjustments including Btu (+) or (−) (¢/Mcf)<br>(3) | 1960 Sales volumes (Mcf)<br>(4) | Total impact ($) (5)=(3)×(4)<br>(5) |
|---|---|---|---|---|
| Standard Oil Company of Texas, a division of Chevron Oil Company | 3 | [11] +1.24 | 281,502 | +3,491 |
| Do. | *7 | [13] +1.80 | 1,392,026 | +25,056 |
| Do. | 11 | [12] −0.40 | 166,404 | −666 |
| The Superior Oil Company | 8 | [12] −0.28 | 57,111 | −160 |
| Do. | 9 | [12] +0.69 | 514,062 | +3,547 |
| Do. | 10 | [12] −1.01 | 651,883 | −6,584 |
| Do. | 30 | ([12]) | 164,285 | |
| Sun Oil Company | 1 | [12] −0.29 | 44,618 | −129 |
| Do. | 59 | [11] +1.24 | 266,249 | +3,301 |
| Do. | **80 | [13] +0.83 | 2,442,395 | +20,272 |
| Sunray DX Oil Company | 81 | ([12]) | 90,413 | |
| Do. | 92 | [12] +0.69 | 1,544,122 | +10,654 |
| Do. | 93 | [12] −0.29 | 114,221 | −331 |
| Do. | 94 | ([12]) | 105,505 | |
| Do. | 103 | [13] −1.71 | 42,319 | −723 |
| Do. | 156 | [11] +1.24 | 306,981 | +3,807 |
| Tenneco Oil Company | 146 | [13] −1.69 | 10,110 | −171 |
| Texaco Inc. | 17 | ([12]) | 4,569,271 | |
| Do. | 18 | [12] +0.69 | 287,924 | +1,987 |
| Do. | 19 | [12] −0.29 | 757,275 | −2,196 |
| Do. | 21 | [12] −1.01 | 5,068,076 | −51,188 |
| Do. | 25 | [12] +1.08 | 72,054 | +778 |
| Do. | 36 | [11] +1.24 | 809,830 | +10,042 |
| Do. | 37 | [11] +1.24 | 152,334 | +1,889 |
| Do. | 168 | [13] −1.69 | 61,668 | −1,042 |
| Do. | 175 | [11] +1.24 | 33,313 | +413 |
| Do. | 176 | [11] +1.24 | 206,769 | +2,564 |
| Do. | 177 | [11] +1.24 | 4,901 | +61 |
| Do. | 178 | [11] +1.24 | 3,014 | +37 |
| Do. | 293 | [12] +0.83 | 101,302 | +841 |
| Tidewater Oil Company | 4 | [12] −0.29 | 43,838 | −127 |
| Do. | 17 | ([12]) | 830,543 | |
| Do. | 42 | [11] +1.24 | 1,512,578 | +18,756 |
| Do. | 83 | [11] +1.24 | 3,277 | +41 |
| Union Oil Company of California | 10 | ([12]) | 354,025 | |
| Do. | 29 | [12] +0.61 | 21,552 | +131 |
| Do. | 34 | [11] +1.24 | 735 | +9 |
| Do. | 107 | [11] +1.24 | 94,415 | +1,171 |
| Do. | 108 | ([12]) | 3,847,980 | |
| Do. | 111 | [12] −0.40 | 54,687 | −219 |
| Union Texas Petroleum, a Division of Allied Chemical Corporation | *12 | ([12]) | 17,756,672 | |
| Do. | 13 | [12] −1.71 | 22,006 | −377 |
| Do. | ***25 | ([12]) | 140,403 | |
| Do. | **27 | [11] +1.24 | 101,415 | +1,258 |
| Do. | **29 | [11] +1.24 | 99,153 | +1,229 |
| Do. | 30 | [12] +0.69 | 152,384 | +1,051 |
| Do. | 41 | [12] −0.40 | 54,744 | −219 |
| Do. | 64 | ([12]) | 10,659,949 | |
| Warren Petroleum Corporation | 22 | ([12]) | 813,559 | |
| Do. | *28 | [10] −1.49 | 22,783,694 | −339,477 |
| Do. | *30 | [10] +0.41 | 8,580,235 | +35,179 |
| Do. | 42 | [12] +0.69 | 443,178 | +3,058 |
| Do. | *43 | [12] +0.21 | 21,712,045 | +45,595 |
| Do. | *44 | ([10]) | 14,984,068 | |
| Do. | 45 | ([10]) | 292,588 | |
| Do. | *50 | [10] +0.05 | 240,322 | +120 |
| Total | | | 458,304,394 | 3,969,090 |
| | | | Quality adjustment impact = 0.866¢/Mcf | |

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*Operator.

**Operator, *et al.*

****Et al.*

****Operator, agent.

[1] Formerly The British-American Oil Producing Company FPC Gas Rate Schedule Nos. 4 and 5.

[2] Supplement No. 1 to Mobil FPC Gas Rate Schedule No. 48 supersedes Marathon Oil Company FPC Gas Rate Schedule No. 54.

[3] Sales from Andrews Plant.

[4] Sales from Benedum Plant.

[5] Sales from Spraberry Plant.

[6] Sales from Eunice Plant.

[7] Sales from Fullerton-Goldsmith Plant.

[8] Sales from Lee Plant.

[9] Sales from Hobbs Plant.

[10] The related area base rate (rounded to two decimals) is 14.51.

[11] The related area base rate (rounded to two decimals) is 14.44.

[12] The related area base rate (rounded to two decimals) is 14.50.

[13] The related area base rate (rounded to two decimals) is 14.42.

The applicable area ceiling rate for each sale can be determined by adding or subtracting, as indicated, the applicable quality adjustments shown in column (3) of the appendix.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2 AND AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. RI60-18, ET AL.

### ORDER EXTENDING TIME FOR FILING EXCEPTIONS AND REPLIES THERETO, WAIVING PAGE LIMITATION, AND FIXING DATE OF ORAL ARGUMENT

(Issued January 6, 1967) *

On December 30, 1966, the Presiding Examiner issued his initial decision in the Area Rate Proceeding for the Southern Louisiana Area, Docket No. AR61-2, *et al.* Under Section 1.31(a) of the Rules of Practice and Procedure the parties normally would be required to file their briefs on exceptions on or before January 30, 1967, and the briefs opposing exceptions would be due on or before February 20, 1967.

Because of the complexity of this proceeding and the length of the Examiner's decision, it is reasonable to anticipate that a number of requests will be forthcoming seeking various extensions in the normal schedule for exceptions as set out above. We believe that some additional time is warranted. Upon due consideration, we have determined that a maximum of 60 days should be allowed for the filing of exceptions to the initial decision and an additional 40 days permitted for the filing of briefs in opposition to the exceptions. These periods appear ample and should negate any requests for additional extensions in time.

For the purposes of this proceeding we are also waiving the 50-page limit on exceptions specified in Section 1.31(b)(2) of the Rules.

In view of the importance of the present proceeding, we believe that two days should be set aside for oral argument. Accordingly, this order will provide that oral argument will take place commencing May 15 and concluding on May 16, 1967. The allowance of time for oral argument will be determined by the Commission after requests for allotments of time have been received. Each participant who wishes to be heard on oral argument shall so indicate by April 20, 1967, and at the same time shall indicate to the Commission the amount of time which he requests to present his argument.

Section 1.31(b)(3) of the Rules provides that fifteen copies of briefs on exceptions and briefs opposing exceptions are to be filed with the Commission, in addition to the copies served on the parties. For the purposes of this proceeding and to assist in our deliberations, we find that twenty-five copies of the briefs will be required.

*The Commission orders:*

(A) The final date for the filing of exceptions to the Examiner's decision in the captioned proceeding is hereby set as February 28, 1967.

(B) The final date for the filing of briefs opposing exceptions in the captioned proceeding is hereby set as April 10, 1967.

(C) The limitation as to the length of briefs on exceptions and replies thereto specified in Section 1.31(b)(2) of the Rules of Practice and Procedure is hereby waived for the purposes of this proceeding.

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*Reconsideration denied by order issued January 20, 1967, *infra*, p. 116.

(D) Twenty-five (25) copies of each brief on exceptions or brief opposing exceptions shall be filed with the Commission in addition to the copies served on the parties to this proceeding.

(E) Oral argument shall be held in the above-entitled proceeding commencing at 10 a.m. on May 15, 1967 and concluding on May 16, 1967, in Washington, D.C. at a place to be hereafter designated.

(F) Each person desiring to present oral argument shall file his request for an allotment of time for his argument on or before April 20, 1967.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NEW ENGLAND POWER COMPANY, PROJECT NO. 1904

### ORDER CLARIFYING ORDER AUTHORIZING SALE OF PROJECT LAND

(Issued January 6, 1967)

Question has been raised about a finding, or lack thereof, in the Commission's November 30, 1966, 36 FPC 913, order authorizing the sale of a ten-acre parcel of land within the project boundary of New England Power Company's Project No. 1904 to the Town of Brattleboro, Vermont. The subject parcel was to be transferred thereafter to the A.P.W. Products Company, Inc., for use by the latter for expansion of its paper mill operations. It has been pointed out that our order fails to find specifically that the parcel of project land involved in the proposed transfer has no value for recreation.

Paragraph (C) of the Commission's Order No. 313, issued December 27, 1965, 34 FPC 1546 (18 CFR 2.7 (C)) reads in part: "The Commission will not grant any authorization for a licensee to dispose of any interest in project lands, unless a showing is made that such disposal is not inconsistent with any approved recreational plan or in the absence of such a plan, that the lands do not have recreational value". The licensee does not have an approved recreational plan. Our November 30, 1966 order authorized the sale of the parcel of project land, because it appeared to the Commission that the parcel does "not have recreational value", although we did not make a specific finding to that effect.

*The Commission finds:*

In the circumstances, clarification of our November 30, 1966 order is appropriate and desirable.

*The Commission orders:*

(A) The Commission's November 30, 1966 order is hereby revised to include under "*The Commission finds:*" the following additional finding:

(2) The aforementioned parcel of Project No. 1904 land herein involved does not have recreational value.

(B) In all other respects the Commission's order of November 30, 1966 is confirmed.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, ET AL. v. COLORADO-UTE ELECTRIC ASSOCIATION, INC., DOCKET NO. E-7306

### ORDER DISMISSING IN PART PETITIONS AND RETURNING WHOLESALE RATE SUBMITTALS

(Issued January 6, 1967) *

By Opinion No. 511, issued January 5, 1967, *supra*, p. 12, *Dairyland Power Cooperative, et al.*, the Commission determined that cooperatively-owned electric suppliers financed by the Rural Electrification Administration (REA) do not fall within the scope of this Commission's regulatory jurisdiction over "public utilities" within the meaning of that term in Section 201 of the Federal Power Act.

The subject proceeding presents, among others, the same question that we resolved in *Dairyland* for Colorado-Ute Electric Association, Inc. (Ute), Montrose, Colorado, is an interstate electric generation and transmission cooperative financed in part by the REA. For the reasons set forth in *Dairyland*, we hold that Ute is not a public utility subject to our jurisdiction. Accordingly, we dismiss the petition of Salt River Project Agricultural Improvement and Power District (Salt River), Phoenix, Arizona, and others[1] filed August 17, 1966 and Ute's answer filed September 2, 1966, insofar as that question is raised. Also, we are directing the Secretary to return to Ute certain wholesale rate schedule submittals which the Cooperative proffered for filing on September 13, 1966 pursuant to Part 35 of the Commission's Regulations under the Power Act.

Salt River's petition requests this Commission to assert regulatory authority over Ute under Parts II and III of the Power Act. Their stated objective is to force Ute, whom they contend is a "public utility" within the meaning of the Power Act, to continue operating and maintaining its existing 150,000 kw steam electric generating plant at Hayden, Colorado (Hayden Plant), and related electric transmission facilities. Numerous provisions of Parts II and III of the Power Act are referred to in the petition.

The Hayden Plant and related transmission facilities were constructed by Ute under a certificate of public convenience and necessity issued by the Colorado Public Utilities Commission in 1963, *Re Colorado-Ute Electric Association, Inc.*, 48 PUR 3d 113, but set aside by the Colorado Supreme Court on February 14, 1966, *Western Colorado Power Company, et al.* v. *Public Utilities Commission of Colorado, et al.*,—Colo.—, 411 P. 2d 785, rehearing denied 411 P. 2d 805. Review of the Colorado Supreme Court's decision was refused by the United States Supreme Court on October 24, 1966, *Colorado-Ute Electric Association, Inc.* v. *Western Colorado Power Company, et al.*, No. 437, October Term 1966. Rehearing was denied December 5, 1966. Pending review by the United States Supreme Court, the State Supreme Court stayed execution of its decision by order dated March 14, 1966.

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*Rehearing and stay denied by order issued March 3, 1967, 37 FPC 495. Affirmed, *Salt River Project Agricultural Improvement and Power District* v. *F.P.C.*, 391 F. 2d 470 [CADC–1968]; cert. denied *sub nom. Arkansas Valley G & T Inc.* v. *F.P.C.*, 393 U.S. 857 [1968].

[1] LaPlata Electric Association, Inc., Durango, Colorado; San Miguel Power Association, Inc., Nucla, Colorado; White River Electric Association, Inc., Meeker, Colorado; Holy Cross Electric Association, Inc., Glenwood Springs, Colorado; Gunnison County Electric Association, Inc., Crested Butte, Colorado; Yampa Valley Electric Association, Inc., Steamboat Springs, Colorado; Grand Valley Rural Power Lines, Inc., Grand Junction, Colorado; and Arkansas Valley G & T, Inc., Pueblo, Colorado.

Salt River and the other petitioners allege that if Ute ceases to provide service from the Hayden Plant and related transmission facilities, electric service to them will be seriously impaired or disrupted and that the Commission can and should find the existence of an emergency within the meaning of Section 202(c) of the Federal Power Act and enter an appropriate order or orders for continued operation of such plant and facilities.

The Power Act contains no requirement that the party whose service is the subject of a petition brought under the provisions of Section 202(c) be a "public utility".[2] Hence, the petition and Ute's answer should not be dismissed insofar as they are grounded upon the provisions of Section 202(c) of the Power Act.

On November 1, 1966 a joint petition to intervene in this proceeding was filed by Bridger Valley Electric Association, Inc., Mountain View, Wyoming, and San Luis Valley Rural Electric Cooperative, Inc., Monte Vista, Colorado, members of Ute. Bridger Valley and San Luis join in the petition filed August 17, 1966 by Salt River and certain other members of Ute. To the extent Bridger Valley and San Luis raise questions which we dismiss as to Salt River and other petitioners, it is appropriate that their November 1, 1966 petition be dismissed. It is retained in the files of the Commission only insofar as it raises issues under Section 202(c) of the Power Act.

By motion filed September 8, 1966, Salt River and other petitioners seek a "final" decision by the Commission without intermediate decision by a presiding officer, request an opportunity to submit proposed findings and conclusions to the Commission, and reserve the right to apply to the Commission for rehearing and to petition for judicial review. Ute concurs in the motion to the extent that it requests a waiver of the intermediate decision procedure and a "final" decision by the Commission. To the extent that the procedural requests relate to issues raised under Section 202(c), it is appropriate that this motion remain before us for further consideration. All other issues raised in the motion of September 8, 1966, are hereby dismissed in accordance with the order.

*The Commission finds:*

(1) The Colorado-Ute Electric Association, Inc., is an interstate electric generation and transmission cooperative financed in part by the REA.

(2) Colorado-Ute is not a "public utility" within the meaning of that term as used in Section 201 of the Federal Power Act.

(3) The petitions filed August 17, 1966 and November 1, 1966, and Ute's answer filed September 2, 1966, should be dismissed with prejudice except insofar as they raise issues cognizable under Section 202(c) of the Federal Power Act and the related procedural sections of that Act. Further, the wholesale rate schedules tendered for filing by Ute should be returned.

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[2] Section 202(c) of the Federal Power Act reads as follows:

> During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

*The Commission orders:*

(A) The petitions filed August 17, 1966 and November 1, 1966, and Ute's answer filed September 2, 1966, as referred to above, are hereby dismissed with prejudice except insofar as they raise issues cognizable under Section 202(c) of the Federal Power Act and the related procedural sections of that Act.

(B) The wholesale rate schedule submittals, as referred to above, shall be returned to Ute by the Secretary of the Commission. The return of one copy of each such submittal shall be deemed compliance with this order.

BAGGE, *Commissioner, concurring in part and dissenting in part:*

I dissent from that part of the order which finds that the Commission has no jurisdiction over Colorado-Ute under Section 201 of the Federal Power Act for the reasons expressed in my *concurring* and *dissenting* statement in *Dairyland Power Cooperative, et al.*, Docket No. E-7113, Opinion No. 511, issued January 5, 1967, *supra*, p. 30.

I concur in that part of the order which retains jurisdiction of the proceeding insofar as it raises issues cognizable under Section 202(c) of the Federal Power Act.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITIES SERVICE GAS COMPANY, DOCKET NO. CP67-104

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 9, 1967)

On October 20, 1966, Cities Service Gas Company (Applicant) filed in Docket No. CP67-107 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and operation of certain transmission facilities, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate small field compressor units including, where necessary, the relocation of such units located on gathering laterals in various presently connected gas producing fields to enable Applicant to take into its certificated main pipeline system natural gas which it is authorized to purchase from producers thereof.

The total cost of the proposed facilities will not exceed a maximum of $500,000, and the cost of units for any single producing area will not exceed $200,000, which cost will be paid out of treasury funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 5, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas

company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943 in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, statements under oath in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $200,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to construct during the calendar year 1967 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above statements under oath in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $500,000, with no single project to exceed a cost of $200,000, and shall not be interpreted as authorization to attach new customers or to increase the volume of sales to existing customers.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CONSUMERS POWER COMPANY, PROJECT NO. 2453

### ORDER ISSUING LICENSE (MAJOR)

(Issued January 9, 1967)

Application was filed on February 28, 1964, and supplemented on January 17, 1966, by Consumers Power Company (Applicant) of Jackson, Michigan for a license for constructed Project No. 2453, known as the Five Channels Plant, located on the Au Sable River, in Iosco County, Michigan. No lands of the United States are affected by the project.

Construction of the Five Channels Plant was commenced in 1911, and the plant was put into operation in November 1912 with an installed capacity of 6,000 kilowatts.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior in reporting on the application, recommended for inclusion in any license for the project the terms and conditions in the interest of fish and wildlife and recreation set forth in attached Form L-3 and special Article 33.

The Department of Health, Education, and Welfare has advised that the project has no adverse effect on water supply, water pollution control or vector control, and none is anticipated.

The Michigan Department of Conservation has advised that in view of an agreement between Applicant and the Department in regard to minimum water release on the Au Sable River and the utilization of project lands for recreational purposes, no special conditions are recommended for inclusion in any license for the project.

While we are approving Exhibit R, filed January 14, 1966 as part of the application for license, which describes the present state of recreational development of project lands, we are requiring the licensee by Article 33 to provide for a public access area near the project dam on the north shore of the reservoir.

In our order issuing license for Applicant's constructed Foote Plant, Project No. 2436, issued January 4, 1966 (35 FPC 23), we found that the Au Sable River, from its mouth to points upstream above Mio at river mile 72.7, is a navigable waterway of the United States. The Five Channels Plant is located on the Au Sable River approximately 22 miles above its mouth.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have a termination date of December 31, 1993. Since there was no project construction after 1935, we will make the effective date of the license April 1, 1962.

*The Commission finds:*

(1) Five Channels Plant, Project No. 2453 is located upon navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the require-

ments of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 8,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) Exhibit R filed as part of the application for license conforms to the Commission's rules and regulations and should be approved as part of this license.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

*The Commission orders:*

(A) This license is hereby issued to Consumers Power Company (Licensee) of Jackson, Michigan, under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of the Five Channels Plant, Project No. 2453, located on the Au Sable River in Iosco County, Michigan, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Five Channels Plant, Project No. 2453, consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

*Exhibit J:* Sheet 1 of 1 (FPC No. 2453–1) General map, showing service area and location of project,

*Exhibit K:* Sheet 1 of 1 (FPC No. 2453–5) Detail map of project area showing flow line and project boundary,

(ii) Project works consisting of: (1) a dam with sand fill embankment and concrete core wall, having an overall length, including reinforced concrete spillway and intake sections, of about 805 feet, and an elevation at 720.42 feet whose maximum height is about 45 feet above streambed; (2) reservoir

3 miles long with normal pool level at 714.67 feet and normal pool area of 250 acres; (3) spillway section with crest elevation at 700.17 feet, containing 3 taintor gates 24 feet wide and 14.5 feet high each, and a fish chute; (4) an intake section containing 3 taintor gates 26 feet wide and 22 feet high each, and an open penstock; (5) a concrete and brick powerhouse integral with the intake section of the dam, containing 2-horizontal four runner Francis type turbines, 2-3000 kw generators at 150 RPM; and (6) a substation and other appurtenances:

The location, nature and character of which are more specifically shown and described by the exhibits which also formed part of the application for license and which are designated and described as follows:

*Exhibit L:* Sheet 1, 2; FPC Nos. 2453-6, 2453-4; title, General Design,

*Exhibit M:* "General Description of Project Equipment", two typewritten pages filed February 28, 1964,

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project, or any part thereof, whether located on or off the project area if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised September 1, 1966) entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States (36 FPC 971), which terms and conditions designated as Articles 1 through 31, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

*Article 32.* The Licensee shall pay to the United States the following annual charge, effective April 1, 1962:

> (a) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 8,000 horsepower.

*Article 33.* The licensee shall construct, maintain, and operate, or arrange for the construction, maintenance, and operation of a public access site with boat launching and related facilities on the north shore of the reservoir immediately above the dam in Sec. 23, T. 24 N., R.6E, and shall design the access facilities in cooperation with the Michigan Department of Conservation and the U.S. Forest Service.

(D) The Exhibit R referred to in finding (7) above is hereby approved as part of this license.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## GREAT NORTHERN PAPER COMPANY, PROJECT NO. 2520

### ORDER ISSUING LICENSE (MAJOR)

(Issued January 9, 1967)

Application was filed on May 3, 1965 by Great Northern Paper Company (Applicant) of Millinocket, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2520, known as the Mattaceunk Project located on the Penobscot River, navigable waters of the United States, in Penobscot and Aroostook Counties, Maine, in the vicinity of Medway and Mattawamkeag. No lands of the United States are affected by the project.

Construction of the project was commenced in October of 1937 and was completed in April of 1940 with the installation during that year of three generating units of 4,800 kw capacity each. In 1942, the fourth generating unit of 4,800 kw capacity was installed.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, has advised that the project as presently operated does not adversely affect fish and wildlife resources, but recommended for inclusion in any license for the project the terms and conditions set forth in attached Form L-3 in the interests of fish, wildlife and recreational resources.

The Department of Health, Education, and Welfare has advised that while the project does not constitute a source of pollution and the granting of a license for the project will not create or intensify vector problems, provision should be made in any such license for future modification of the project operation, if necessary for water quality, as required by Article 33 herein.

The Maine Department of Inland Fisheries and Game has requested that the existing 22-foot wide fish ladder (described in paragraph (B) below as a part of the project works) be kept in operation and maintained. This is provided for by this license, particularly paragraph (B) herein.

Applicant has filed an Exhibit R recreational use plan but recognizes that present recreational use of project lands and waters is minimal due to existing water conditions. It further recognizes that under improved water quality conditions the project has recreational potential and Applicant has expressed its willingness to reevaluate needs for recreational development. Article 34 herein requires Applicant to cooperate with State and local agencies and others in developing and maintaining access areas and roads and such other facilities as may be necessary for full recreational utilization by the public of project lands and waters; and to report to the Commission at stated periods the results of such cooperation and of further recreational development at the project. Pending such further study and development Commission approval of an Exhibit R recreational use plan for this project will be deferred.

In our order issuing license for constructed Project No. 2312 on the Penobscot River, issued December 9, 1963 (30 FPC 1465) we found that the Penobscot River is a navigable waterway of the United States.

Applicant has requested that any license granted for the project be issued for a period of 50 years from the date of its issuance or at the earliest from

1961. However, in accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1938 and a termination date of December 31, 1987, since neither a declaration of intention nor a timely application for license was filed with respect to the aforesaid construction commencing the latter part of 1937.

*The Commission finds:*

(1) The project is located on navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 19,200 horsepower from January 1, 1938, and 25,600 horsepower from January 1, 1942, and the amount of annual charges, based on such capacities to be paid under the license for the project for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

*The Commission orders:*

(A) This license is hereby issued to Great Northern Paper Company (Licensee) of Millinocket, Maine, under Section 4(e) of the Federal Power Act (Act) for a period effective as of January 1, 1938 and terminating December 31, 1987 for the continued operation and maintenance of Project No. 2520, located on the Penobscot River in Penobscot and Aroostook Counties, Maine, subject to the terms and conditions of the Act, which are incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Mattaceunk Project No. 2520 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

*Exhibit J:* Sheet 1 of 3 (FPC No. 2520-1) entitled "General Map of Power System—Ripogenus Project—Penobscot Mills Project-Mattaceunk Project" signed by R. Stevens Kleinschmidt for Great Northern Paper Co. on April 30, 1965.

*Exhibit K:* (FPC No. 2520-4) entitled "Detail Map of Dam and Flowage Area—The Mattaceunk Project-Mattawamkeag, Maine.—Great Northern Paper Co.—Millinocket, Maine." signed by R. Stevens Kleinschmidt for Great Northern Paper Co. on April 30, 1965.

(ii) Project works as follows: (a) a dam with a 657-foot spillway equipped with 4 feet of automatic flashboards, a 114-foot section with 90-foot wide roller gate, a 37-foot section with a 10-foot wide log sluice and a 22-foot wide fish ladder, a 142-foot long powerhouse, the remaining 110 feet of the structure is earth-fill with a concrete core wall; the total length of the dam is 1,060 feet and the maximum height is 45 feet, creating a reservoir of 1,550 acres; (b) the powerhouse, known as Weldon Station has a concrete substructure and steel frame and brick superstructure containing two adjustable turbines of 5,900 hp each and two fixed blade turbines of 6,250 hp each, operating at 39 feet head, four generators of 4,800 kw each with appurtenant facilities. The total installed capacity of the project is 19,200 kw. (c) A substation containing six 4000 kva single-phase transformers; (d) a transmission line approximately 9 miles long connecting to applicant's mill at East Millinocket, and (e) appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

*Exhibit L:* Sheet 1 of 2 (FPC No. 2520-5) entitled "Plan and Sections of Dam and Station.—The Mattaceunk Project-Mattawamkeag, Maine.—Great Northern Paper Co.-Millinocket, Maine." signed for Great Northern Paper Co. by R. Stevens Kleinschmidt on April 30, 1965.

*Exhibit L:* Sheet 2 of 2 (FPC No. 2520-6) entitled "Plan and Section of Dike.—The Mattaceunk Project-Mattawamkeag, Maine. Great Northern Paper Co.-Millinocket, Maine." signed for Great Northern Paper Co. by R. Stevens Kleinschmidt on April 30, 1965.

*Exhibit M:* A list of mechanical and electrical equipment consisting of five typewritten pages, filed in the Commission on May 3, 1965.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised September 1, 1966) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", (36 FPC 971), which terms and conditions designated as Articles 1 through 31, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

*Article 32.* The licensee shall pay to the United States the following annual charges:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 19,200 horsepower, effective as of January 1, 1938, and 25,600 horsepower, effective as of January 1, 1942.

*Article 33.* Licensee shall, in the interest of maintaining and improving water quality at the project, consult with the appropriate State and Federal health agencies, and make such alterations in the project and its operation as the Commission may require on its own motion or upon the recommendation of other agencies after notice and opportunity for hearing.

*Article 34.* Licensee shall cooperate with State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of three (3) years from the date of issuance of this license and every fifth year thereafter, Licensee shall advise the Commission of the results of cooperation with State and local agencies and of recreational development at the project.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## L. E. SMITH, ET AL., DOCKET NO. RI67-110; DAVID CROW (TRUSTEE), ET AL., DOCKET NO. RI67-111; H. T. SHALETT AND DAVID CROW, ET AL., DOCKET NO. RI67-112

### ORDER DENYING MOTION FOR MODIFICATION OF ORDER SUSPENDING PROPOSED INCREASED RATES

(Issued January 9, 1967)

The above-named Respondents tendered unilateral increased rates from 11.85¢[1] to 18.75¢ per Mcf[2] at 15.025 psia for certain jurisdictional sales of natural gas in North Louisiana to Southern Natural Gas Company (Southern). The proposed rates were suspended by order issued October 21, 1966 in the above-entitled proceedings for the five-month statutory period because they exceeded the applicable guideline increased rate ceiling. In addition to the justness and reasonableness of the rates, these proceedings also involve a contractual question relating to the right of Respondents to make unilateral filings. The proposed rates therefore would have been suspended because of the contractual question even if they did not exceed the increased rate ceiling.

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[1] The 11.85¢ rate, which includes a base rate of 10.35¢ plus a claimed tax reimbursement of 1.5¢, was collected by Respondents subject to refund. In *T. L. James & Company, et al.,* Opinion No. 504, issued August 17, 1966, 36 FPC 463, the Commission determined that Respondents herein were not entitled to any tax reimbursement. The 10.35¢ base rate is thus Respondents' firm rate.

[2] The 18.75¢ rate includes tax reimbursement of 1.75¢ per Mcf, and is subject to a 2¢ per Mcf deduction by Southern for dehydration. The proposed net rate is therefore 16.75¢ per Mcf.

Respondents on November 7, 1966, filed a joint motion requesting modification of the Commission's October 21 suspension order. They contend that (1) the proposed increased rates are 16.75¢ per Mcf, not 18.75¢ as set forth in the suspension order; (2) the proposed rates do not exceed the ceiling set forth in the Seventh Amendment to the Statement of General Policy No. 61–1, 30 FPC 1370, which is applicable to rate schedules from which all price escalations are being eliminated except for provisions for future changes in tax reimbursement; (3) they are entitled to the increased rate ceiling of 16.3¢ (14¢ plus 2.3¢ tax reimbursement) without suspension; and (4) they are entitled at a minimum to rates of 11.25¢ per Mcf without suspension because such rates are contractually authorized.

Southern filed on November 14, 1966, an answer in each of these proceedings contending that Respondents were not entitled to the Seventh Amendment rate ceiling and requesting that a hearing be set on these matters at the earliest possible date. Southern has also filed a petition to intervene in these proceedings.

The proposed increased rates of Respondents are, of course, 16.75¢ per Mcf when the 2¢ per Mcf deduction for dehydration is taken into consideration. The suspension order indicates in a footnote that the 18.75¢ rate is subject to a 2¢ deduction. There is therefore no need to modify the suspension order in this connection.

In making their unilateral rate filings Respondents claimed that the contracts included in their rate schedules were either invalid or had terminated. Assuming *arguendo* the correctness of their position, the Seventh Amendment to the Policy Statement would not be applicable to the subject unilateral filings. The Seventh Amendment applies only when price escalation clauses are being eliminated from a binding contract which has at least five years remaining on its term. It has no applicability to situations where after service has begun the underlying contracts involved are held to be invalid or terminated; in such situations no express price escalations are needed to file increases whenever the seller desires. On the other hand, if Respondents' contractual position is not upheld, then Respondents have no contractual right at this time to the Seventh Amendment ceiling. It is therefore clear that the Seventh Amendment does not apply to Respondents' unilateral rate filings.

Assuming *arguendo* that the incremental portion from 10.35¢ to 11.25¢ of Respondents' total proposed rate increase is contractually authorized, such increment is still subject to the Commission's just and reasonable determination even though the increment is below the applicable increased rate ceiling. The same is true with respect to the increment from 10.35¢ to 16.3¢.[3] Accordingly, there is no justification at this time for granting Respondents' request.

We note, however, that there is now pending a rule-making proceeding in Docket No. R–312 which would relieve a producer of any refund obligation below 13.75¢ per Mcf in the area involved here, except where a contractual problem is presented. If the proposed amendment is adopted, Respondent may seek the relief granted therein if there is no contractual dispute as to the 11.25¢ rate.

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[3] The increased rate ceiling in North Louisiana is 14¢, exclusive of tax reimbursement. Respondents assume that the applicable ceiling for their sales is 14¢ plus 2.3¢ tax reimbursement. The Commission, however, has not yet had occasion to determine whether a producer in this area should be allowed to collect, without refund obligation, an increased rate composed of a base rate of 14¢ and a tax reimbursement in excess of 1.75¢. Nor is it necessary to make any such determination here, because in any event Respondents are not entitled to the relief they seek.

By letter dated November 18, 1966, Respondents informed the Commission that civil proceedings regarding the contractual matters involved in the subject proceedings were pending in a Louisiana state court and that trial thereof was expected after the first of 1967. As the question of the validity of Respondents' contracts has become a matter of litigation in state court, we believe that Commission action on these questions should be deferred.

*The Commission orders:*

Respondents' motion filed on November 7, 1966 in the above-designated proceedings is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTHEASTERN INDIANA NATURAL GAS COMPANY, INC. AND TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP67-133

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued January 9, 1967)

On November 8, 1966, Southeastern Indiana Natural Gas Company, Inc. (Applicant), filed in Docket No. CP67-133 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Gas Transmission Corporation (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 1,443 Mcf of natural gas per day to Applicant for resale and distribution in the communities and environs of Milan and Versailles, Ripley County and Moores Hill, Dearborn County, Indiana, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate distribution systems in each of the three communities and to construct and operate the following lateral line facilities:

(1) 8 miles of 6-inch lateral extending westward from a point of interconnection with Respondent's transmission line;

(2) 6.75 miles of 4-inch lateral extending westward from the terminal of the aforementioned 6-inch lateral to the Town of Versailles;

(3) 4.2 miles of 3-inch lateral extending northward from the intersection of the 6-inch and the 4-inch laterals to the Town of Milan;

(4) 2 miles of 3-inch lateral extending eastward from Milan to the Town of Moores Hill.

Applicant's estimated annual and peak day requirements of natural gas for the third year of proposed service are 129,861 Mcf and 1,443 Mcf, respectively. All volumes stated herein are at a measurement pressure base of 14.73 psia.

Applicant's estimated total cost for the proposed project in the first year is $367,333, increasing to $391,813 in the third year. Transmission and distribution costs are estimated to be $198,483 and $105,450, respectively. Applicant proposes to finance its project through a construction fund consisting of a mortgage loan underwritten by the American United Life Insurance Company, Indianapolis, Indiana, in the amount of $210,000 and by the sale of $160,000 in subscriptions to equity capital.

On December 9, 1966, Respondent filed an answer to the application herein, stating that it has no objection to rendering the service requested by Applicant provided that the maximum daily delivery obligation of Respondent to Applicant does not exceed Applicant's estimated third-year requirements and provided that Applicant executes a service agreement acceptable to Respondent within 45 days after the issuance of this order.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

(1) Respondent, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949 in Docket No. G-859 (8 FPC 190).

(2) Applicant, Southeastern Indiana Natural Gas Company, Inc., a corporation organized and existing under the laws of the State of Indiana, is authorized to construct and operate natural gas facilities and to distribute and sell natural gas as proposed.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transmission facilities with the proposed facilities of Applicant and to sell and deliver up to 1,443 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 1,443 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-341

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 10, 1967)

On October 24, 1966, Colorado Interstate Gas Company (Petitioner), filed in Docket No. CP65-341 a petition to amend the order issued in said docket on July 6, 1965, 34 FPC 6, by requesting authorization to make sales of natural gas on a long term basis to Western Gas Service Company (Western) in lieu of limited term service authorized by order issued in the subject docket on July 6, 1965, all as more fully set forth in the petition to amend.

By the order issued in the instant proceeding on July 6, 1965, Petitioner was authorized to construct and operate facilities to sell and deliver gas on a short term basis to Western at two points on Petitioner's 20-inch Fourway to Kit Carson pipeline. The sale of natural gas to Western was to be made under Petitioner's Rate Schedule X-24.

Western has informed Petitioner that since Western's other supplies are insufficient to serve present customers it now desires a long term agreement with gas deliveries under Petitioner's Rate Schedules PR-1 and IS-2. Accordingly, Petitioner specifically requests that the order in the instant proceeding be amended to permit sales of natural gas to Western under Petitioner's Rate Schedules PR-1 and IS-2.

Petitioner has currently filed a related service agreement with Western, which provides for a continuation of deliveries to Western to September 1, 1986. No change is proposed in the daily volumetric obligations. The tendered rate filing changes service from Rate Schedule X-24 to CIG's PR-1 and IS-2 Rate Schedules.

The firm 1150 Mcf per day deliveries under Rate Schedule PR-1 will be at a monthly demand charge of 84.0 cents per Mcf with a commodity charge of 18.5 cents per Mcf. Deliveries under Rate Schedule IS-2 will be at 21.0 cents per Mcf.

Waiver of notice requirements of Section 154.22 of the Commission's Regulations is requested to permit the tendered service agreement to become effective on the first day of the month following authorization requested herein.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on November 3, 1966 (31 F.R. 14089). No protest, petition to intervene, or notice of intervention has been filed in this proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that Colorado Interstate Gas Company's service agreement with Western Gas Service Company filed on October 24, 1966 be accepted effective on the first day of the month following issuance of the order herein that the Commission's order issued July 6, 1965 in this Docket No. CP65-341 be amended and that with respect to such service agreement the requirements of Section 154.22 of the Commission's Regulations be waived.

*The Commission orders:*

(A) The Commission's order issued July 6, 1965 in Docket No. CP65-341, is amended so as to authorize Colorado Interstate Gas Company to continue the sale of natural gas to Western Gas Service Company pursuant to its Rate Schedules PR-1 and IS-2 in lieu of the presently authorized sales under Rate Schedule X-24, on condition that firm deliveries under Rate Schedule PR-1 be limited to 1,150 Mcf per day, and that Petitioner comply with the provisions of Section 157.20 (a) and (e) of the Commission's Regulations.

(B) Petitioner's service agreement filed October 24, 1966 is accepted for filing effective on the first day of the month following the issuance of this order.

**(C) The notice requirements of Section 154.22 of the Commission's Regulations with respect to the service agreement filed October 24, 1966 is waived.**

**(D) In all other respects said order shall remain in full force and effect.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP67-118

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

**(Issued January 10, 1967)**

**On October 31, 1966, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), filed in Docket No. CP67-118 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and the operation of gas-sales or transportation facilities, all as more fully set forth in the application.**

**Applicant proposes to construct and operate facilities to be used for the transportation and sale of natural gas previously authorized under existing certificates to be made to existing distributors at rates on file with the Commission and for direct sales of natural gas to consumers located in areas outside the franchise area of any local distributors. Miscellaneous rearrangements not resulting in any change of service rendered by means of facilities involved when required by highway construction, dam construction or other similar reasons are also contemplated by the proposals.**

**Deliveries to any one distributor or consumer will not exceed 100,000 Mcf annually and will not be used for boiler fuel purposes.**

**The total estimated cost of proposed facilities will not exceed $100,000, with no single project to exceed $50,000, which will be financed from current working funds.**

**After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.**

**At a hearing held on January 5, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,**

***The Commission finds:***

**(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued April 6, 1943 in Docket No. G-259 (3 FPC 966).**

**(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.**

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the 1967 calendar year. The total expenditures for facilities to be constructed thereunder should be limited to a maximum of $100,000 with no single project to exceed $50,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to construct during the 12 months following the issuance of this order the proposed facilities hereinbefore described, as more fully described in the application, in this proceeding, and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967. The total expenditures for facilities to be constructed thereunder is limited to a maximum of $100,000 with no single project to exceed $50,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP67-125

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 10, 1967)

On November 4, 1966, Transwestern Pipeline Company (Applicant) filed in Docket No. CP67-125 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and operation of natural gas facilities for the sale of natural gas to existing distributors for resale in existing market areas, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct a maximum of 35 new delivery points, 10 miles of lateral or loop lines of no more than 4 inches in diameter, 35 taps and 5 meters in order to sell gas for resale as stated above. Further, Applicant states that no facility will be installed and no sale will be made which does not meet the requirements set forth in Section 157.7(c) of the Commission's Regulations.

The total estimated cost of facilities proposed under this application will not exceed a maximum of $150,000 exclusive of the costs for which Applicant will be reimbursed for taps under Article 8 of Applicant's Service Agreement, Form C, which is contained in its FPC Gas Tariff. The total deliveries to any one consumer will not exceed a maximum of 100,000 Mcf of natural gas per year.

Since Applicant's Service Agreement, Form C, provides for certain reimbursements for costs of taps and valves, Applicant requests a waiver of the provisions of Section 157.7(c)(1)(i) of the Commission's Regulations which prohibit the filing of an abbreviated application when a distributor is required to make a contribution to the Applicant for cost of construction of facilities.

The cost of facilities will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 5, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959 in Docket No. G-14871, *et al.*, (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $150,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) Good cause has been shown for waiver of that portion of Section 157.7(c)(1)(i) of the Commission's Regulations under the Act which prohibits the filing of an abbreviated application where contribution toward the cost of the facilities is to be required of distributors.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Transwestern Pipeline Company, to construct during the calendar year 1967 the proposed facilities and to operate such facilities to sell natural gas to distributors for resale, as hereinbefore described, and as more fully described in the application in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $150,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued hereinabove is granted on the express condition that any interruptible service which may result from the authorization herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) Applicant's request for waiver of that portion of Section 157.7(c)(1)(i) of the aforesaid Regulations which prohibits the filing of an application where contribution to the cost of facilities is to be required from distributors is granted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP67-114

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 10, 1967)

On October 27, 1966, United Gas Pipe Line Company (Applicant) filed in Docket No. CP67-114 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the sale of an additional 650 Mcf of natural gas per day to Lamar Refining Company (Lamar), an existing customer, all as more fully set forth in the application.

Specifically, Applicant requests authorization to enlarge and operate measuring facilities presently serving Lamar at the existing location in Section 19, Township 1 North, Range 15 West, Lamar County, Mississippi. Said facilities will enable Applicant to sell and deliver to Lamar an additional volume of approximately 120,800 Mcf of natural gas annually. The proposed additional delivery of natural gas to Lamar will increase the total annual and peak day deliveries of natural gas to Lamar by Applicant to approximately 214,762 and 1,000 Mcf, respectively.

The subject sales will be made pursuant to a concurrently filed contract with Lamar, dated August 29, 1966 for a term ending January 1, 1973.

The total estimated cost of the proposed facilities is $1,698, which cost will be financed out of current working funds.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on January 5, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942 in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of said Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to United Gas Pipe Line Company authorizing the construction and operation of the facilities and the transportation and sale of up to 1,000 Mcf of natural gas per day as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 3 months from the date of this order.

(D) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any further increases in their requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-190

### ORDER AMENDING ORDER GRANTING CERTIFICATE

(Issued January 11, 1967)*

Ohio Valley Gas Corporation (Ohio Valley) on September 1, 1966, requested that the Commission direct Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to waive certain overrun penalties in the amount of $33,340 assessed against Ohio Valley during the months of March and April, 1966. In support thereof, Ohio Valley states that it was not served with the Commission's order of March 14, 1966, 35 FPC 376[1] and consequently had no knowledge that as of March 14, 1966, it was purchasing gas under a service agreement dated January

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*Rehearing and request for oral argument denied by order issued March 3, 1967, 37 FPC 494. Affirmed, *sub nom.* *Ohio Valley Gas Corp.* v. *F.P.C.* [per curium order unreported]; cert. denied 390 U.S. 987 [1968].

[1] That order granted Michigan Wisconsin's request for an amendment to the certificate of public convenience granted on March 30, 1965, 33 FPC 655, in this proceeding and authorized an increase in the MDQ delivered to Ohio Valley from 6,000 Mcf per day under Rate Schedule SGS-1, to 6,750 Mcf per day under Rate Schedule ACQ-1.

1, 1966, and Michigan Wisconsin's Rate Schedule ACQ–1, rather than a superseded service agreement which provided for purchases under Rate Schedule SGS–1. Accordingly, Ohio Valley continued to purchase gas during the months of March and April at approximately its entitlement of 6,000 Mcf per day under Rate Schedule SGS–1. Because its contract entitlement under the service agreement dated January 1, 1966 was 75 percent of 6,750 Mcf or 5,062, Ohio Valley between March 23rd and April 13th unknowingly took 3,334 Mcf of overrun gas. The overrun charges of $33,340 resulted.

In its answer filed on October 31, 1966, Michigan Wisconsin states that since there is no provision in its tariff which permits the waiving of overrun penalties, it would oppose Ohio Valley's request. It stated, however, that it would have no opposition to appropriate Commission action which may relieve Ohio Valley of the overrun charges. Michigan Wisconsin suggested that this may be accomplished by making the new service agreement effective as of April 14, 1966, rather than March 14, 1966, as provided in the Commission order of March 14, 1966.

Ohio Valley, by tender of November 25, 1966, objects to the proposal offered by Michigan Wisconsin alleging that this "would merely reduce the amount of the penalty from $33,340 to $8,545." A review of the facts indicates that the $8,545 to which Ohio Valley refers is not an overrun penalty charge. It is in fact, a charge for the gas actually received including the aforementioned 3,334 Mcf under Rate Schedule SGS–1 over that which it would have paid under Rate Schedule ACQ–1, for the same volumes. The Commission concludes therefore, that an equitable solution results from billing Ohio Valley under the service agreement and rate schedule which it believed to be effective at the time that the 3,334 Mcf was delivered. Michigan Wisconsin's answer therefore is considered as a motion to amend the aforementioned order issued March 14, 1966 in this proceeding. Based on the circumstances herein, we believe it is in the public interest in carrying out the provisions of the Natural Gas Act to grant the motion.

*The Commission orders:*

(A) Paragraph (B) of the Commission's order issued March 14, 1966, in this proceeding, is hereby amended to provide that the service agreement between Michigan Wisconsin and Ohio Valley dated January 1, 1966, be effective as of April 14, 1966.

(B) The request of Ohio Valley as filed on September 1, 1966, is hereby denied.

(C) In all other respects, the aforementioned order issued March 14, 1966, shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PHILADELPHIA ELECTRIC COMPANY, PROJECT NO. 2355

### ORDER MODIFYING LICENSE ARTICLE IN THE INTERESTS OF FISH PROTECTION

(Issued January 13, 1967)

On July 1, 1966, Philadelphia Electric Company, licensee for Muddy Run Pumped Storage Project No. 2355, filed an application for modification of Article 40 of its license for the project. Muddy Run Project is located on the

Susquehanna River and its tributary, Muddy Run, in Lancaster and York Counties, Pennsylvania.

Article 40 provides for the installation of fish screens or other protective devices on the draft tubes/pump intakes simultaneously with construction of other project features, and for cooperation by the licensee with the U.S. Fish and Wildlife Service and the Pennsylvania Fish Commission in the design of such fish-protective devices. Pursuant to the article, the licensee retained the services of a fishery biologist and a hydraulic engineer concerned with fishery problems, and consulted with the U.S. Fish and Wildlife Service, the Pennsylvania Fish Commission and its own Board of Consultants. From such services and consultations, it was concluded that in order to arrive at a suitable and economic design and operation of a fish-protective facility at the pumped-storage project, certain basic biological data will be required, and in this connection, the licensee proposes in its application a two-part, three-year biological study program to be undertaken by a qualified agency under the guidance of an advisory group the membership of which would consist of representatives of the Department of the Interior, the Pennsylvania Fish Commission, the Federal Power Commission, the licensee and the agency conducting the study, at an estimated cost of $350,000. The proposed study program would involve: (1) a general ecological study (initiated on June 1, 1966) of the project area to furnish a complete year of data prior to project operation, and (2) a physiological study of fish swimming speed and physical stamina for the species of fish found in the project area.

To provide for the proposed studies and at the same time to avoid any unnecessary postponement of the beginning of project operations required by Article 30 of the license, the licensee requests the deletion of license Article 40 and Commission authorization of the proposed biological study program.

By letter dated September 26, 1966, the Department of the Interior recommended the deletion of Article 40 from the license and that an article be included to assure adequate fish protection of the project, with a requirement for post-construction evaluation studies of the fish protection facilities and their modification if recommended by the U.S. Fish and Wildlife Service or the Pennsylvania Fish Commission. The licensee objected to both post-construction evaluation studies and modification of fish protection facilities, stating that such requirements are adequately provided for under license Article 16. Although it is our view that provision for further modifications of the project structures and operation for the conservation and development of fish and wildlife resources are provided for by license Article 16, Article 40 as hereinafter modified may make unnecessary Commission action under Article 16.

*The Commission finds:*

It is appropriate and consistent with the public interest that the license for Project No. 2355 be modified as hereinafter ordered.

*The Commission orders:*

(A) Article 40 of the license for Project No. 2355 is hereby modified to read as follows:

*Article 40.* The Licensee shall (1) make or pay the cost of making such studies as may be necessary to determine the design of fish protective facilities as may be needed at the project; (2) construct, operate and maintain or provide for the construction, operation and maintenance of such fish-protective facilities as may be ordered by the Commission upon the recommendation of the U.S. Fish and Wildlife Service or the Pennsylvania Fish Commission; and, (3) make or pay the cost of making suitable studies during operation of the

**project to evaluate the effectiveness of any fish-protective facilities constructed under (2) herein. In the event the nature and extent of studies herein required cannot be resolved, the Commission reserves the right to make such determination after notice and opportunity for hearing.**

**(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## PHILADELPHIA ELECTRIC COMPANY, PROJECT NO. 2355

### ORDER GRANTING PERMISSION TO FILL RESERVOIR

**(Issued January 13, 1967)**

**The Philadelphia Electric Company (Licensee) holds a license for Project No. 2355, the Muddy Run pumped storage development located on the Susquehanna River and on Muddy Run, a tributary of the Susquehanna River in Lancaster and York Counties, Pennsylvania. The license order issued September 21, 1964, in Project No. 2355 (32 FPC 826) contains special Articles 35, 38 and 39 which, respectively, provide *inter alia* that the Licensee must receive Commission approval prior to the filling of the upper reservoir; that it shall, prior to the impounding of water, dispose of all temporary structures, unused timber, brush, refuse and other unnecessary material up to the normal water level; and that it must cooperate with the National Park Service, Department of the Interior in negotiating a contract for archeological survey and salvage within certain money limitations.**

**Licensee, pursuant to the requirements of Article 35, engaged a Board of Consultants to review the designs, specifications, and construction of the dam and dikes, suitability and treatment of their foundations and of the reservoir floor, the powerhouse, and other project facilities, and has submitted to the Commission the report of its Board of Consultants. The licensee proposes to fill the upper reservoir in accordance with the following procedure:**

> **The licensee proposes to plug the diversion tunnel and begin filling the upper reservoir as soon as Commission approval is obtained. It estimates that the reservoir level will reach elevation 350 feet subsequent to February 1, 1967 (the date originally estimated which was based on filling beginning in early November 1966), through storage of natural runoff, after which filling will be accomplished by pumping from the Conowingo reservoir (of project No. 405) at a rate so as not to exceed raising the upper reservoir level more than 20 feet per day. When the reservoir level reaches elevation 470 feet (minimum operating pool level), the main units will be operated for both generation and pumping in order to observe the effects of drawdown on the dam embankment. Following this procedure, the reservoir level will be raised to normal full pool elevation 520 feet. A complete set of instrument readings will be taken prior to the start of reservoir filling and will include slope indicator, settlement, and piezometer readings. Such readings will be taken frequently during the period**

> of natural filling and subsequent readings will be taken after each 20-foot rise in reservoir level. During the filling operations the Board of Consultants will be kept advised of all instrument data obtained and of all observations made by operating personnel. The Board will review information provided, recommend procedural changes if required, and will visit the site to personally review the operations.

The aforementioned procedure, as outlined by the Licensee, was arrived at after reviewing the Board of Consultant's Reports, and after consultation with the Board, and has been reviewed by Commission staff.

Licensee has complied with the provisions of Article 38 by clearing the appropriate project lands. Pursuant to Article 39, Licensee submitted evidence in the form of three letters from the parties concerned which indicates that an archeological survey was made with negative results. The National Park Service stated in one such letter that no archeological values will be lost to flooding or construction of this project.

We conclude from the report of the Board of Consultants submitted by Licensee, and from Commission staff inspections, that the project is completed sufficiently to allow filling of the upper reservoir in accordance with the procedure submitted by Licensee.

*The Commission finds:*

(1) It is appropriate and in the public interest in administering Part I of the Federal Power Act that Philadelphia Electric Company should be authorized to fill the upper reservoir of Project No. 2355, as hereinafter provided.

(2) Licensee has complied with its commitments pursuant to Articles 35, 38 and 39, respectively, necessary prior to the filling of the upper reservoir.

*The Commission orders:*

The Philadelphia Electric Company is hereby authorized to fill the upper reservoir of Project No. 2355 in accordance with the aforesaid procedure.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## TRANSWESTERN PIPELINE COMPANY, DOCKET NOS. CP67-131 AND CP67-132

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 13, 1967)

Transwestern Pipeline Company (Applicant) filed on November 8, 1966, in Docket Nos. CP67-131 and CP67-132, applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the Applicant to resume the sale and delivery of natural gas on a best efforts interruptible basis of 10,000 Mcf daily to Pioneer Natural Gas Company (Pioneer) in Docket No. CP67-131 and 5,000 Mcf daily to Southern Union Gas Company (Southern) in Docket No. CP67-132, all as more fully set forth in the applications.

On July 24, 1962, in Docket No. CP63-19, Applicant received temporary authorization to construct and operate facilities and to make sales of surplus gas to Pioneer through September 30, 1964. This authorization was extended to September 30, 1966 by temporary authorization issued November 5, 1964 in Docket No. CP65–112. Applicant terminated deliveries upon expiration of the authorization.

Applicant now requests authorization to resume the aforementioned sale of natural gas through September 30, 1968, under Applicant's Rate Schedule E–1, FPC Gas Tariff, First Revised Volume No. 1.

On April 3, 1963, 29 FPC 702, in Docket No. CP63–143 Applicant received permanent authorization to construct and operate facilities and to make sales of surplus gas to Southern Union through September 30, 1964. This authorization was extended to September 30, 1966, by Order Amending Order Issuing Certificate of Public Convenience and Necessity issued April 5, 1965, 33 FPC 700. Applicant terminated deliveries upon expiration of the authorization.

Applicant requests authorization to resume the aforementioned sale of natural gas through September 30, 1968, under Applicant's Rate Schedule E–1, FPC Gas Tariff, First Revised Volume No. 1.

No additional facilities are required as deliveries will be made thru existing facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 12, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 10, 1963 in Docket No. CP63–290 (30 FPC 997).

(2) The proposed sale and delivery of natural gas on an interruptible best efforts basis by Applicant, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid sale and delivery of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (e) and (f) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) Certificates of public convenience and necessity are issued to Applicant authorizing the sale and delivery of natural gas by Applicant to Pioneer in Docket No. CP67–131 and to Southern in Docket No. CP67–132 as hereinbefore described and as more fully described in the applications in this proceeding, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e) and (f) of Section 157.20 of such Regulations.

(C) The service authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 30 days from the date on which this order issues.

(D) The certificates issued are granted upon the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(E) Transwestern shall file timely and appropriate service agreements covering the subject sales to Pioneer and Southern in accordance with the Commission's Regulations.

(F) Applicant shall report to the Commission the date of commencement of service within ten days thereof.

(G) Applicant shall limit the maximum daily volume to 10,000 Mcf to Pioneer Natural Gas Company (Docket No. CP67-131) and to 5,000 Mcf to Southern Union Gas Company (Docket No. CP67-132) under Transwestern's FPC Rate Schedule E-1.

(H) The period of the sales to both Pioneer and Southern Union shall be limited to the period ending September 30, 1968.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## GULF STATES UTILITIES COMPANY, DOCKET NO. E-7328

### ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued January 16, 1967)

Gulf States Utilities Company (Applicant), incorporated under the laws of the State of Texas and doing business in that State and the State of Louisiana, with its principal business office at Beaumont, Texas, filed an application with the Federal Power Commission on December 9, 1966, for authorization, pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding $35,000,000 principal amount of First Mortgage Bonds, due 1997. Applicant is distributing and selling electric energy in southeastern Texas and south central Louisiana.

The First Mortgage Bonds are to be dated as of the first day of the month in which they are issued (presently expected to be February 1, 1967) and are to be due 30 years from such date. The interest rate on the Bonds will be determined by the most favorable bid received and accepted.

The new Bonds are to be issued under and secured by the Applicant's Indenture of Mortgage dated September 1, 1926, as supplemented and modified by twenty-two supplemental indentures and to be further supplemented and modified by the Twenty-third Supplemental Indenture, under which Manufacturers Hanover Trust Company of New York is Trustee.

On or about January 18, 1967, Applicant proposes to invite sealed written bids for the purchase of the Bonds by newspaper publication and by distribution of a "Public Invitation for Bids for the Purchase of the Bonds", setting forth terms and conditions relating thereto. All bids, whether from a single bidder or group of bidders, must be in writing in the Form of Bid furnished by Applicant and must be for the purchase of the entire amount of Bonds. Each bid must specify among other things: (1) the interest rate of the Bonds, which rate shall be a multiple of ⅛th of 1%; and (2) the price to be paid to the Applicant, which price shall not be less than 100% nor more than 102–½% of principal amount thereof, and shall provide that accrued interest on the Bonds will be paid to the Applicant by the purchaser or purchasers.

Unless postponed, all bids for the purchase of the proposed issuance of Bonds must be delivered to the Applicant's representative at the Manufacturers Hanover Trust Company, Room A, Fourth Floor, 40 Wall Street, New York, N.Y., before 11 a.m. New York time, on February 1, 1967, and be accompanied by a deposit of $1,050,000. Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the invitation, it will accept the bid which provides for the lowest cost of money.

Applicant states that the proceeds obtained from the proposed issuance of Bonds will be utilized to pay off Applicant's outstanding short term notes due on or prior to December 31, 1967, estimated to be in the amount of $29,900,000, at the time of the sale of the New Bonds, and to provide a portion of the funds for Applicant's construction program. Applicant anticipates that the cost of its 1966 and 1967 construction program will total about 127,500,000. Principal items in this program include the completion of a 440,000 kw generating unit at the Sabine generating plant; the commencement of construction of a 580,000 kw generating unit at Willow Glen generating plant; the commencement of construction of a 580,000 kw generating unit at the Nelson Station and the commencement of construction of a 220,000 kw unit of the new Conroe generating plant. The latter two units are scheduled for completion in 1970. Applicant's portion of the 500 kv tie-line to the TVA system will be completed during 1967.

Written notice of the application has been given to the Texas Railroad Commission and the Louisiana Public Service Commission and to the Governor of each of those states. Notice has also been given by publication in the Federal Register on December 31, 1966 (31 F.R. 16809) stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before January 11, 1967 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 27, 1957, *Gulf States Utilities Company*, Docket No. E–6785 (18 FPC 701).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant

and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given on this application is reasonable.

*The Commission orders:*

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-162

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 16, 1967)

On December 12, 1966, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-162 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and, through its Peoples Division, the transportation and delivery, on a firm basis, of an additional 4,000 Mcf and an additional 2,000 Mcf of natural gas per day to Farmland Industries, Inc. (Farmland) and the Nitrogen Division of Allied Chemical Corporation (Allied), respectively, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate 9.7 miles of 36-inch mainline loop north of Mullinville, Kansas. The proposed additional deliveries will result in an increase in total authorized firm daily deliveries for Allied and Farmland from 12,000 Mcf to 14,000 Mcf and from 21,000 Mcf to 25,000

Mcf, respectively. Farmland and Allied will both utilize the additional natural gas as feedstock for the production of fertilizers at their respective plants located near Fort Dodge, Iowa, and at La Platte, Nebraska.

The total estimated cost of the proposed facilities is $1,563,800, which cost will be financed from reserve accruals, retained earnings and cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 12, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943 in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should not entitle the industrial customers to whom firm deliveries are authorized therein to any priorities to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(7) Total authorized firm deliveries to Farmland and Allied should be limited to 25,000 Mcf per day and 14,000 Mcf per day, respectively.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver additional quantities of natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by September 1, 1967.

(D) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) Total authorized firm deliveries to Farmland and Allied are limited to 25,000 Mcf per day and 14,000 Mcf per day, respectively.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NOS. G-12706 AND G-18841

### ORDER DENYING MOTION FOR FURTHER PROCEEDINGS

(Issued January 16, 1967)

The City of Pittsburgh (Pittsburgh) filed on January 9, 1967 a motion[1] requesting that the Commission order Texas Eastern Transmission Corporation (Texas Eastern) to demonstrate the justness and reasonableness of the settlement rates reflecting "deferred taxes" adopted in the above-captioned dockets or, in the alternative, to make refunds to its jurisdictional customers of the amounts collected between September 1, 1960[2] and June 1, 1965[3] attributable to normalization benefits.

The motion contends that paragraph (J) of our January 25, 1961, 25 FPC 172 at p. 177, settlement order read in light of the recent decision in *Alabama-Tennessee Natural Gas Company*[4] requires us to grant the relief requested. Paragraph (J) provides:

> The settlement herein approved shall not be deemed to dispose of the normalized tax treatment accorded liberalized depreciation under Section 167 of the Internal Revenue Code. *If ultimate judicial determination should hold such income tax normalization to be erroneous*, further proceedings in these dockets may be had upon motion of any party hereto to determine the disposition of any amounts included by Texas Eastern in its cost of service for effect of liberalized depreciation and deferred taxes. [Emphasis supplied.]

The reference to a possible ultimate judicial determination holding "such income tax normalization to be erroneous" must be read as applying to litigation before the courts at the time of settlement,[5] thus, inasmuch as the courts have ruled that deferral of liberalized depreciation benefits was lawful and was within the purview of the Commission's administrative discretion, the contingency provided for in paragraph (J) never materialized. At the time of settlement the matter was before the Supreme Court on petition for certiorari from a decision of the Court of Appeals for the Fifth Circuit, *El Paso Natural Gas Co.* v. *F.P.C.*[6] Certiorari was denied and with the decision of the lower court affirming the Commission's adoption of normalization left standing, the reservation provided in paragraph (J) was extinguished. On October 2, 1961, moreover, the Court of Appeals for the Fourth Circuit dismissed a petition for review of a similar Commission order utilizing rate normalization,[7] and during the effective period of the settlement rates in these dockets the Court of Appeals for the District of Columbia also affirmed the use of normalization in *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*[8]

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[1] On January 12, 1967 Texas Eastern filed an answer in opposition to the motion.

[2] The effective date of the settlement rate prescribed in Docket No. G-12706.

[3] The effective date of the superseding reduced rates filed by Texas Eastern in Docket No. RP65-59, approved by order issued July 21, 1965 (34 FPC 98).

[4] 359 F. 2d 318 (CA5-1966), cert. den., 385 U.S. 847 (1966).

[5] *El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d 567 (CA5-1960), cert. den., 366 U.S. 912; *Cities of Lexington, et al.* v. *F.P.C.*, 295 F. 2d 109 (CA4-1961); *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 316 F. 2d 659 (CADC-1963), cert. den., 375 U.S. 881.

Nor is it pertinent that the Commission changed its policy regarding deferral of depreciation benefits on February 3, 1964 with the issuance of Opinion No. 417, 31 FPC 208, inasmuch as that opinion was not finally affirmed until denial of petition for certiorari by the Supreme Court on October 10, 1966 in *Alabama-Tennessee*.[9] On the latter date, the settlement rates in the instant dockets had been superseded by the reduced rates filed in Docket No. RP65-59. We also note that Article II of the agreement, embodied in Texas Eastern's letter of intent, terminated all of its obligations under Docket Nos. G-12706 and G-18841, with the exception of its contingent refund obligations.

Finally, the requested relief sought in these dockets is totally inconsistent with Pittsburgh's acquiescence to the terms agreed upon in Texas Eastern's last rate settlement in Docket No. RP65-59 which we approved, without objection from any party on this point, in an order issued July 21, 1965, 34 FPC 98.[10] Under that settlement agreement, Texas Eastern is obligated to deduct from its rate base the deferred tax balances accumulated in prior years, including 1960 and 1965, under deferral rate treatment and to flow-through the resulting cost-of-service reductions. If Pittsburgh's petition were granted Texas Eastern would be compelled to flow-through the same amounts twice: in that later docket, on the one hand, and by an additional refund of approximately $36 million in the instant dockets, on the other hand. We note that neither Pittsburgh nor any other party has objected to Texas Eastern's proposal to flow-through the rate reductions and rate refunds which result from the deduction of these accumulated tax balances from that pipeline's rate filing of December 13, 1966, approved by our order in RP65-59 issued on January 16, 1967, *infra*, p. 100.[11]

Accordingly, we conclude that paragraph (J) of our order approving settlement of the above dockets neither requires nor authorizes us to order Texas Eastern to reduce its rates for the period in question or otherwise demonstrate why such reductions should not be ordered. The motion of the City of Pittsburgh filed January 9, 1967, should be denied.

*The Commission orders:*

The motion of the City of Pittsburgh for further proceedings in Docket Nos. G-12706 and G-18841 filed January 9, 1967 be, and hereby is, denied.

Commissioner Ross *not participating.*

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[6] Footnote 5, *supra.*

[7] Footnote 5, *supra.*

[8] Footnote 5, *supra.*

[9] Footnote 4, *supra.*

[10] Order Conditionally Approving Rate Reduction and Dismissing Complaint Proceeding.

[11] Order Approving Rate Reduction and Refund Proposal: Releasing and Retaining Refunds and Requiring Report of Intended Disposition of Refundable Amounts.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP65-59

### ORDER APPROVING RATE REDUCTION AND REFUND PROPOSAL; RELEASING AND RETAINING REFUNDS AND REQUIRING REPORT OF INTENDED DISPOSITION OF REFUNDABLE AMOUNTS

(Issued January 16, 1967)

The Commission by order[1] issued July 21, 1965, 34 FPC 98, approved a voluntary rate reduction proposal which, among other things, provided that Texas Eastern Transmission Corporation (Texas Eastern) would reduce its rates and make refunds designed to flow-through certain liberalized tax depreciation benefits, on the occurrence of the events specified in Article VI of the company's letter of intent, dated June 1, 1965.

On December 8, 1966, Texas Eastern tendered revised tariff sheets which were to become effective on December 1, 1966, and proposed an annual rate reduction of $9,282,337 based upon actual sales volumes during the test year ended October 1, 1965. Texas Eastern also proposed to refund $11,454,599, to be distributed among the parties who were its jurisdictional customers during the period from October 1, 1965 through November 30, 1966.

On December 13, 1966, we noticed the company's proposal for comment and only one objection, filed by The City of Pittsburgh, has been received. Although not a customer of Texas Eastern, the City is served by three gas distributors which buy gas (directly or indirectly) in that pipeline's Rate Zones C and D. The City contends that the uniform reduction in unit rates, for each type of service, proposed by Texas Eastern, unfairly discriminates against the customers in those two zones. The basis for this complaint is that since rates in Zones A and B are lower than in Zones C and D, the former realizes a higher percentage rate reduction than does the latter. Accordingly, it advocates that the liberalized depreciation refunds and rate reductions be distributed in accordance with a zone by zone cost of service determination for this pipeline. However, the flow-through of liberalized depreciation is required by the recent settlement agreement in Docket No. RP65-59, filed June 1, 1965.

And that settlement agreement is silent on the subject of how the rates and refunds resulting from the flow-through of liberalized depreciation tax savings are to be computed. Moreover, the method used by Texas Eastern here is identical with that used in flowing through the immediate rate reduction embodied in Docket No. RP65-59. Furthermore, Texas Eastern's flow-through of the Federal income tax reduction in Docket No. RP64-36 was also made on a uniform basis in all zones. Last, but not least, approximately 88 percent of the refunds and rate reductions benefits customers in Zones C and D so that the suggested recomputation would have only a negligible impact on jurisdictional sales in the Pittsburgh area.

Under these circumstances, and bearing in mind that the proposed uniform rate reduction preserves all existing zone rate differentials, we believe that Pittsburgh's protest is without merit. We are here concerned only with the narrow issue of the proper method of reflecting a flow-through of liberalized depreciation tax benefits in accordance with the terms of a settlement agreement and cannot consider, in such a context, fundamental and far-reaching issues of zone cost allocations and rate differentials which Pittsburgh is free to raise by the filing of a Section 5(a) complaint if it deems such action appropriate.

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[1] Order Conditionally Approving Rate Reduction and Dismissing Complaint Proceedings.

Under these circumstances, and bearing in mind that the proposed uniform rate reduction preserves all existing zone rate differentials, we believe that Pittsburgh's protest is without merit and should be dismissed.

Analysis of this proposal indicates that the rate reductions and refunds involved comply with the pertinent requirements of the letter of intent submitted in the above-captioned docket and with ordering paragraphs (D) and (G) of our order of approval thereof, issued July 21, 1965. It further appears that good cause has been shown for waiver of the statutory thirty day notice requirement so that the 44 revised tariff sheets submitted by Texas Eastern will be permitted to become effective on December 1, 1966.

Texas Eastern has declared its intention to discontinue the use of deferred tax accounting and to substitute therefor "actual tax expense" or "flow-through accounting" with respect to the reduction in income taxes resulting from use of liberalized depreciation. At this time, no concrete details concerning the proposed change in accounting have been submitted and such action, on the part of the company, will be reviewed in due course at an appropriate later date.

Texas Eastern's filing includes a report showing the amount of the refunds which would be attributed to gas purchases made by each of its jurisdictional customers. Texas Eastern sells natural gas for resale, at rates subject to our jurisdiction, to the distributor customers listed in that report and to 15 natural gas pipeline companies.

In accordance with our established policies, we are authorizing Texas Eastern to immediately release the portion of such refunds attributable to those of its jurisdictional customers which are distribution companies. We are also authorizing the immediate release of the refunds payable to those of Texas Eastern's jurisdictional pipeline customers[2] which are either *de minimis* in amount or relate wholly to the intrastate distribution or direct industrial sales of these pipelines since the purposes which our refund retention policy and escrow procedures are designed to serve[3] are inapplicable in these situations.

With respect to Texas Eastern's other jurisdictional pipeline customers[4], we find that it is necessary and appropriate that each of such jurisdictional pipeline purchasers shall submit the report hereinafter required which indicates whether it is expressly obligated to flow-through the amounts received; whether it proposes voluntarily to pass on such refunds or whether it intends to retain the whole or any portion thereof. This is necessary to avoid the possibility that a permanent and irremedial gap in the refund line would be created, since it is not known what disposition these pipelines will make of any refunds they may be permitted to receive.

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[2] Arkansas Louisiana Gas Company, Ark-Mo. Power Co. & Associated Gas Co., Carnegie Natural Gas Company, Equitable Gas Company and Tennessee Gas Pipeline Company.

[3] Order Releasing Certain Refunds and Requiring Reports of Intended Disposition of Other Refundable Amounts, United Gas Pipe Line Company, *et al.*, Docket No. RP61-18, *et al.*, issued April 21, 1965, 33 FPC 837.

[4] Algonquin Gas Transmission Company, Consolidated Gas Supply Corporation, East Tennessee Natural Gas Company, The Manufacturers Light and Heat Company, The Ohio Fuel Gas Company, Tennessee Gas Transmission Company (now: Tennessee Gas Pipeline Company, a Division of Tenneco Inc.) Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation and United Natural Gas Company.

We are also expressly requiring that Texas Eastern shall retain all refundable amounts which have not expressly been released herein, or by subsequent order, for payment to a designated jurisdictional pipeline customer, or to its own immediate distributor customers and affording it the option of depositing such amounts in an escrow account or using them in its own operations at the prime interest rate of 6 percent.

*The Commission orders:*

(A) Texas Eastern is hereby authorized to distribute and pay within 10 days from the date of this order, to each of its distributor customers listed in Appendix A hereto and to each of its jurisdictional pipeline customers other than those listed in footnote 4 of this order, all amounts shown in said Appendix A which are attributable to gas purchased from Texas Eastern by any of such jurisdictional customers during the period from October 1, 1965 to November 30, 1965.

(B) Within 10 days of the date of payment of the refunds identified in ordering paragraph (A) above, Texas Eastern shall submit to this Commission a copy of the releases received from each of its aforesaid distributor and pipeline jurisdictional customers with respect to the refunds authorized herein.

(C) Texas Eastern shall retain and defer the refunds attributable to gas purchased by its jurisdictional pipeline customers between October 1, 1965 and November 30, 1966, which have not been specifically released by this order, under the terms and conditions specified in ordering paragraphs (H) and (I) of Opinion No. 428-A entered in Docket No. RP63-1 on September 2, 1964, 32 FPC 687, until the issuance of a further order directing or authorizing the disposition of such refunds.

(D) Algonquin Gas Transmission Company, Consolidated Gas Supply Corporation, East Tennessee Natural Gas Company, The Manufacturers Light and Heat Company, The Ohio Fuel Gas Company, Tennessee Gas Transmission Company (now: Tennessee Gas Pipeline Company, a Division of Tenneco Inc.) Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation and United Natural Gas Company shall submit, in triplicate within 30 days of the date of issuance of this order, and serve a copy on each jurisdictional customer and affected State commission, a detailed report showing:

(i) The portion of the amounts refundable under Appendix A hereto which the reporting pipeline claims it has a right to retain, together with a full explanation of the basis of such claim including any pertinent factual circumstances.

(ii) The portion of the amounts refundable under Appendix A hereto which the reporting pipeline proposes to flow-through to its jurisdictional customers together with a detailed explanation of the methods and allocation factors used in determining the jurisdictional portion of such refunds.

(iii) The proposed plan of distribution of the respective total amounts received from Texas Eastern setting forth by months, by rate schedules, and by purchasers, the amount to be refunded to each jurisdictional customer, the billing determinants used to compute the refunds to each customer and the aggregate amount attributable to nonjurisdictional sales in each such reporting period.

(E) The provisions of Part 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and the 44 revised tariff sheets tendered for filing by Texas Eastern on December 8, 1966, are accepted for filing to become effective as of December 1, 1966.

Commissioner Ross *not participating.*

## APPENDIX A

*Texas Eastern Transmission Corporation, Refunds to Jurisdictional Customers for the Period Oct. 1, 1965, through Nov. 30, 1966*

| *Customer* | *Refund amount* |
|---|---|
| Algonquin Gas Transmission Company | $1, 379, 993. 18 |
| Anna, Illinois, City of | 3, 939. 86 |
| Arkansas Louisiana Gas Co. for McCrory | 2, 584. 70 |
| Arkansas Louisiana Gas Co. for Beebe & Cabot | 3, 648. 91 |
| Arkansas Louisiana Gas Co. for Paragould | 12, 233. 92 |
| Ark-Mo Power Co. & Assoc. Natural Gas Co | 126, 121. 52 |
| Atlantic Seaboard Corporation | 172. 35 |
| Batesville, Indiana, City of | 5, 187. 69 |
| Belmont, Mississippi, Town of | 941. 64 |
| Bernie, Missouri, City of | 1, 155. 78 |
| Brooklyn Union Gas Company, The | 280, 272. 46 |
| Bude, Mississippi, Town of | 472. 45 |
| Cairo, Illinois, City of | 13, 621. 94 |
| Carnegie Natural Gas Company | 100, 990. 25 |
| Central Illinois Public Service Company | 47, 490. 92 |
| Chambersburg, Pennsylvania, Borough of | 18, 242. 77 |
| Colbert Consolidated Gas Company | 61, 865. 80 |
| Columbia Gas System, Inc.: | |
| Manufacturers Light and Heat Co., The | 805, 785. 63 |
| Ohio Fuel Gas Company, The | 826, 490. 14 |
| Columbia, Kentucky, City of | 2, 430. 69 |
| Community Natural Gas Company, Inc | 1, 020. 41 |
| Consolidated Edison Company of N.Y., Inc | 221, 064. 37 |
| Consolidated Natural Gas Co.: | |
| East Ohio Gas Company, The | 1, 189, 495. 56 |
| Consolidated Gas Supply Corporation | 1, 411, 074. 00 |
| Peoples Natural Gas Company, The | 573, 171. 63 |
| River Gas Company, The | 6, 261. 44 |
| Consumers Gas Company for Albion, Ill | 1, 671. 18 |
| Consumers Gas Company for Carmi, Ill | 14, 472. 49 |
| Consumers Gas Company for Omaha, Ill | 203. 07 |
| Crossville, Illinois, Village of | 1, 134. 37 |
| East Tennessee Natural Gas Co | 2, 626. 30 |
| Edmonton, Kentucky, City of | 451. 95 |
| Elizabethtown Gas Company | 59, 078. 53 |
| Equitable Gas Company | 429, 347. 38 |
| Flora, Mississippi, Town of | 1, 046. 26 |
| Franklin, Tennessee, Town of | 5, 904. 94 |
| Ft. Branch Natural Gas Company, Inc | 2, 157. 84 |
| Fulton, Mississippi, Town of | 1, 853. 46 |
| Gas Utility District 2-Pointe Coupee Parish, La | 378. 35 |
| Gloster, Mississippi, Town of | 260. 62 |
| Grayville, Illinois, City of | 8, 215. 70 |
| Harrisburg, Arkansas, City of | 2, 806. 71 |
| Hartsville Gas Company | 1, 278. 63 |
| Horton Highway Utility District | 2, 083. 62 |
| Huntingburg, Indiana, City of | 3, 189. 77 |
| Indiana Gas & Water Company, Inc | 12, 530. 15 |
| Indiana Natural Gas Corporation | 960. 17 |

## APPENDIX A—Continued

*Texas Eastern Transmission Corporation, Refunds to Jurisdictional Customers for the Period Oct. 1, 1965, through Nov. 30, 1966*—Continued

| *Customer* | *Refund amount* |
|---|---|
| Jasper, Indiana, City of | $5, 800. 29 |
| Jonesboro, Illinois, City of | 927. 41 |
| Lafayette, Tennessee, City of | 1, 567. 03 |
| Lawrenceburg, Tennessee, City of | 16, 442. 13 |
| Lawrenceburg Gas Company | 1, 522. 03 |
| Lebanon, Tennessee, City of | 10, 479. 78 |
| Liberty, Kentucky, City of | 1, 468. 31 |
| Long Island Lighting Company | 105, 591. 90 |
| Loretto, Tennessee, City of | 45. 07 |
| Meadville, Mississippi, Town of | 459. 84 |
| Midwest Natural Gas Corporation | 7, 080. 74 |
| Mississippi Gas Corporation | 275. 17 |
| Mississippi Valley Gas Co. at Ethel, Miss | 174. 09 |
| Mississippi Valley Gas Co. at McCool, Miss | 79. 41 |
| Mississippi Valley Gas Co. at Amory, Miss | 9, 402. 87 |
| Missouri Utilities Company | 60, 992. 44 |
| National Gas & Oil Corporation | 81, 272. 01 |
| New Harmony, Indiana, Town of | 1, 060. 41 |
| New Jersey Natural Gas Company | 309, 536. 11 |
| Norris City, Illinois, Village of | 1, 774. 69 |
| Oxford Natural Gas Company | 5, 158. 17 |
| Permian Oil and Gas Company, The | 2, 715. 09 |
| Petersville Gas Company, Inc | 275. 81 |
| Philadelphia Electric Company | 339, 249. 32 |
| Philadelphia Gas Works Division of U.G.I | 524, 114. 40 |
| T. W. Phillips Gas & Oil Company | 29, 560. 91 |
| Poseyville, Indiana, Town of | 462. 88 |
| Pottsville Gas Company, et al | 80, 383. 86 |
| Public Service Electric and Gas Company | 702, 024. 35 |
| Pulaski, Tennessee, City of | 4, 816. 69 |
| Red Bay, Alabama, Town of | 1, 423. 64 |
| Smyrna, Tennessee, Town of | 1, 734. 76 |
| Somerset, Kentucky, City of | 17, 504. 49 |
| Starks Water & Gas, Inc | 131. 76 |
| Tennessee Gas Pipe Line Company | 5, 431. 04 |
| Tennessee Gas Transmission Co | 35, 149. 00 |
| Texas Gas Transmission Corporation | 791, 487. 11 |
| Tompkinsville, Kentucky, City of | 1, 467. 38 |
| Transcontinental Gas Pipe Line Corp | 308, 150. 80 |
| United Cities Gas Company for Illinois Division | 10, 412. 64 |
| United Cities Gas Company for Tennessee Division | 14, 474. 47 |
| United Natural Gas Company | 305, 769. 85 |
| Utica, Mississippi, Town of | 636. 93 |
| Weir, Mississippi, Town of | 99. 63 |
| Westport Natural Gas Company, Inc | 357. 08 |
| York County Gas Company | 8, 229. 31 |
| **Total** | 11, 454, 559. 60 |

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A Carver, Jr.

## CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

### ORDER DENYING MOTION TO POSTPONE HEARING

(Issued January 17, 1967)

By motion filed December 15, 1966, Scenic Hudson Preservation Conference (Scenic Hudson), Intervener in the above proceeding, asks that further hearings be postponed until the New York City Department of Water Supply, Gas and Electricity has decided whether (a) to permit Consolidated Edison Company of New York, Inc., Applicant for license in this proceeding, to build a by-pass to the Catskill Aqueduct at Cornwall and to install certain pumping facilities, and (b) to permit Cornwall to tap the Catskill Aqueduct. Scenic Hudson urges that the hearings in this proceeding be resumed only if both permissions are granted. The motion filed December 15, 1966, also seeks to withdraw an earlier motion of Scenic Hudson, by telegrams dated November 21 and November 23, 1966, for postponement of further hearings in this proceeding. We are permitting withdrawal of the earlier telegraphic motion.

The Applicant on December 27, 1966, filed a response in opposition to Scenic Hudson's motion of December 15, 1966. Responses in opposition to the motion to postpone further hearings were submitted by the Town of Cornwall and the Village of Cornwall on December 28, 1966, and December 29, 1966, respectively.[1]

We have considered the various arguments and allegations made both for and against postponement, and we find no basis, consistent with the Commission's duties and responsibilities under the Federal Power Act, to postpone this proceeding. The Commission's determination of whether or not a license should be issued must be made in the context of the factual material presented by the record. To the extent the arguments advanced may be relevant to issues in this proceeding, the public interest is better served by development of the factual record at the earliest possible time.

We are mindful, too, that under the mandate of the Court of Appeals the Commission should strive to expedite this proceeding. *Scenic Hudson Preservation Conference* v. *Federal Power Commission*, 354 F. 2d 608, 625, certiorari denied, *sub nom. Consolidated Edison Co.* v. *Scenic Hudson Preservation Conference*, 384 U.S. 941.

*The Commission finds:*

It is appropriate and in the public interest in administering Part I of the Federal Power Act and the Commission's Rules of Practice and Procedure that the motion for postponement of further hearings filed by Scenic Hudson Preservation Conference on December 15, 1966, be denied.

*The Commission orders:*

(A) The motion for postponement of further hearings filed by Scenic Hudson Preservation Conference on December 15, 1966, is denied.

(B) The request for withdrawal of the telegraphic motions of November 21 and November 23, 1966, is granted.

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[1] Although these responses may not have been filed with the Commission within the ten days allowed by Section 1.12 of the Commission's Rules of Practice and Procedure (18 CFR 1.12), we have considered them as objections to Scenic Hudson's motion.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

### ORDER DENYING MOTION FOR STAY OF PROCEEDING

(Issued January 17, 1967)

We are considering here a motion filed on November 14, 1966, by the Scenic Hudson Preservation Conference (Scenic Hudson), Intervener in this proceeding, to defer further proceedings until September 26, 1969, or to whenever a compact pursuant to Public Law 89-605 (80 Stat. 847) has been consented to or approved by the Congress, whichever occurs first. On November 17, 1966, Consolidated Edison Company of New York, Inc., (Applicant) filed an answer and objection to this motion of Scenic Hudson.

Passage of P.L. 89-605 does not remove the Hudson River from our licensing jurisdiction or provide a basis for deferring further proceedings as requested. Insofar as Section 5 of that Law[1] is concerned, the Commission as a matter of standard practice, gives notice to and receives the views of the Secretary of the Interior on pending applications. In any event, by its own terms the requirements of that section do not apply to this proceeding.

The only other provision of P.L. 89-605 which might be relevant is the concluding portion of Section 1 which states that: "it is the sense of the Congress that Federal departments and agencies should, insofar as possible, consider the effect of projects or actions upon achievement of the objectives of this Act until the compact has been acted upon by the States and the Federal Government." The language plainly states that: "Federal departments and agencies should, insofar as possible, consider * * *." No moratorium is required or even suggested. The language enacted differs from that proposed to the Congress; *i.e.*, that: * * * Federal departments and agencies should, insofar as possible, refrain from projects or actions inconsistent with the objectives of this Act * * *." (H. Rep. No. 1917, 89th Cong. 2d Sess. 7). Other legislative history, particularly the bills which preceded that finally enacted, shows that with reference to this proceeding no stay was intended.[2]

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[1] Section 5. In order to avoid, insofar as possible, decisions or actions by any department, agency, or instrumentality of the United States which could unfavorably affect or alter any resource of the Hudson Riverway having substantial natural, scenic, historic, or recreational value until such time as the States and the United States shall have had an opportunity to negotiate a compact, all departments, agencies, and instrumentalities of the United States shall consult with the Secretary concerning any plans, programs, projects, and grants under their jurisdiction within or affecting the Hudson Riverway. Any Federal department, agency, or instrumentality before which there is pending an application for a license for an activity which may affect the resources of the Hudson Riverway shall notify the Secretary and, before taking final action on such application, shall allow the Secretary 90 days to present his views on the matter. These requirements shall not apply to any applicant for a license which was pending and being actively pursued on July 1, 1966, and shall cease to apply three years after the date of this Act, or whenever a compact has been consented to or approved by the Congress, whichever occurs first.

[2] Section 6 of H.R. 13058 as originally introduced March 10, 1966, would have provided in part that for a period of three years following date of enactment: "* * * the Federal Power Commission is hereby directed not to issue any license for any project within one mile of the mean high water line of the navigable portion of the Hudson River" unless the President found the national interest to be adversely affected by such prohibition.

We assume, without prejudice to a later showing to the contrary, that the provisions of Section 1 of P.L. 89–605 apply to this proceeding. If we are to "consider the effect", however, we think the consideration must be made on the merits on the basis of the hearing record in this proceeding. Postponement would serve no useful purpose in aid of that determination or in the discharge of our responsibilities under the Federal Power Act.

As noted above, the Commission gives notice to and invites the views of the Secretary of the Interior, as well as many others at the local, state and federal level, with respect to applications for license or preliminary permit pending before the Commission. In this proceeding departments, agencies, public and private organizations at local, state and national levels have sought and have been granted intervention. Thus interested parties, including Scenic Hudson, are afforded an opportunity to show whether the pending application should be denied or whether a license should be issued and, if the latter, what terms and conditions should be made a part of the license.

*The Commission finds:*

It is appropriate and in the public interest in administering Part I of the Federal Power Act and the Commission's Rules of Practice and Procedure that the motion filed by Scenic Hudson Preservation Conference on November 14, 1966, should be denied in all respects.

*The Commission orders:*

The motion filed by Scenic Hudson Preservation Conference on November 14, 1966, is hereby denied in all respects.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NOS. CP67–134 AND CP65–255, ET AL.

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING ORDER ISSUING CERTIFICATE

(Issued January 17, 1967)

On November 10, 1966, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP67–134 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain additional natural gas storage facilities at its Howell Storage Field, Livingston County, Michigan, and requesting that the order issued by the Commission on August 26, 1966, in Docket No. CP65–255, *et al.*, 36 FPC 538, be amended so as to increase the maximum reservoir content limitation on the Howell Storage Field from 25,000,000 Mcf to 29,000,000 Mcf of natural gas, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate 20 injection-withdrawal wells, approximately 10.6 miles of varying diameter gathering line and a 2,000 horsepower compressor unit.

The Howell Storage Field is a depleted gas field which initially contained approximately 31,600,000 Mcf of natural gas. The estimated reservoir volume proposed to be contained by November 1, 1967, is 27,600,000 Mcf. A reservoir volume of 29,000,000 Mcf would provide approximately 17,600,000 Mcf as cushion gas and approximately 11,400,000 Mcf as working gas with a daily deliverability of approximately 210,000 Mcf.

Applicant proposes to install and equip the new storage wells during the winter and prior to the spring thaw which interferes with projects of this nature so that the additional storage delivery capacity will be available for the 1967–68 heating season.

The total estimated cost of Applicant's proposed project is $3,810,000, including $360,000 attributed to additional cushion gas (1,800,000 Mcf at 20 cents per Mcf), which cost will be financed from general funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 12, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation, having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 23, 1942, in Docket No. G–200, *et al.* (3 FPC 273).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in Docket No. CP65–255, *et al.*, be amended as hereinafter ordered.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Panhandle Eastern Pipe Line Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date of this order.

(D) The Commission's order issued on August 26, 1966, in Docket No. CP65–255, *et al.*, is amended so as to increase the maximum reservoir content limitation on the Howell Storage Field, Livingston County, Michigan, from 25,000,000 Mcf to 29,000,000 Mcf of natural gas. In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## WESTERN NATURAL GAS COMPANY AND SINCLAIR OIL & GAS COMPANY, DOCKET NO. G–19252; WESTERN NATURAL GAS COMPANY, SINCLAIR OIL & GAS COMPANY AND AMERADA PETROLEUM CORPORATION, DOCKET NOS. RI60–45, AND RI61–437

### ORDER REQUIRING REFUNDS, AND TERMINATING PROCEEDINGS IN PART

(Issued January 17, 1967)

On November 8, 1966, Western Natural Gas Company (Western) filed a motion for an order approving a settlement proposal, releasing monies collected subject to refund and for termination of the above-docketed proceedings insofar as they pertain to it.[1] The proposal relates to sales of natural gas made, subject to refund, by Western under its FPC Gas Rate Schedule No. 3 to its parent, El Paso Natural Gas Company (El Paso) from January 27, 1960 to July 1, 1963. Upon the latter date, Sinclair Oil & Gas Company (Sinclair) succeeded to the interest of Western in subject sale, and subsequently Amerada Petroleum Corporation (Amerada) became a co-owner with Sinclair. Each assumed liability for any refunds that may be ordered by the Commission for sales of natural gas to El Paso for the subject sale after July 1, 1963. Western's proposal does not affect in any way the refund obligations of Sinclair and Amerada in the above-entitled proceedings.

Docket Nos. G–19252 and RI60–45 were consolidated in the Permian Basin Area Rate Proceeding, Docket No. AR61–1. Docket No. RI61–437 was included in the Commission's order issued August 5, 1965, in Docket No. AR61–1, requiring the respondents named in said order to show cause why its Opinion No. 468, 34 FPC 159, 424, issued in said proceeding should not also be applicable to them. Western has filed a quality statement for the subject rate schedule, in compliance with Opinion No. 468, as amended by Opinion No. 468–A, 34 FPC 1068, which reflects a rate of 14.0¢ per Mcf of natural gas at 14.65 psia applicable to the sale for the period here concerned. Such quality statement was accepted by the Commission. Consequently, Western proposes to refund to El Paso all monies charged and collected, subject to refund, above

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[1] The motion was filed by Western's trustee, it having been dissolved as a corporation under the laws of the State of Delaware.

14.0¢ per Mcf of natural gas at 14.65 psia from January 27, 1960 to July 1, 1963, with applicable interest. Such refunds approximate $386,000, inclusive of interest.

*The Commission finds:*

The proposed settlement by Western of the above-designated proceedings on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Western on November 8, 1966, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

*The Commission orders:*

(A) The offer of settlement filed with the Commission by Western on November 8, 1966, is hereby approved in accordance with the provisions of this order.

(B) Western shall compute the difference between the rates collected subject to refund in the above-entitled proceedings and the settlement rate for the sales of natural gas to El Paso involved herein with applicable interest to the date of this order, and shall within 30 days from the date of issuance of this order, submit a report to the Commission, with a copy to El Paso, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from El Paso acknowledging receipt of such refund monies and agreeing to the correctness thereof.

(C) Upon notification by the Secretary of the Commission that Western has complied with the terms and conditions of this order, the above designated proceedings shall be deemed terminated insofar as they pertain to Western.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NON-ACCEPTABILITY OF CONTRACTS BETWEEN INDEPENDENT PRODUCERS AND INTERSTATE NATURAL GAS COMPANIES CONTAINING CERTAIN PROVISIONS IN DAILY-CONTRACT-QUANTITY AND TAKE-OR-PAY-FOR CLAUSES, DOCKET NO. R–199

### ORDER NO. 334

### PRESCRIBING CERTAIN MAKE-UP PROVISIONS

(Issued January 18, 1967)*

On May 22, 1961, the Commission issued a Notice of Proposed Rulemaking in this proceeding (26 F.R. 4615), as amended on June 20, 1961 (26 F.R. 5689), and as further amended on March 16, 1965 (30 F.R. 3715), wherein it proposed to limit provisions in rate schedules by prohibiting the use of certain daily-contract-quantity and make-up provisions in contracts for the sale for resale of natural gas by independent producers in interstate commerce. This rule was proposed primarily because of the potential economic dangers posed by the prepayment positions of many pipeline companies and the likelihood of higher gas costs for consumers caused thereby, contrary to the public interest.

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*Published in the Federal Register on January 25, 1967 (32 F.R. 865).

Comments were invited from interested persons and 42 replies to the amended notice were received.[1] Of these, 32, including the Independent Natural Gas Association of America, representing pipeline companies, and the Independent Petroleum Association of America, representing producers, requested termination of the proceeding without any affirmative action. In addition, a number of pipeline companies, independent producers, the Railroad Commission of the State of Texas and the Kansas Corporation Commission independently filed responses in opposition to the proposal. Ten parties submitted responses suggesting substantial modifications to the proposed rule. Included among them were various distribution companies, independent producers and the Pennsylvania Public Utilities Commission.

The Commission has carefully reviewed the various comments and has considered the prepayment obligations of the pipeline companies as they currently exist. While we maintain concern over the potential harm which could be caused by an undue burden of excess prepayment balances, we are cognizant of the fact that there are but a limited number of pipeline companies who currently have made prepayments to the same degree as that prevalent in earlier years. Most companies have been able to reduce their prepayment burdens. One major contribution to the alleviation of the burden has been our relaxation of the 12-year deliverability requirement for pipeline companies, resulting from a change in Commission policy (see § 2.61 of regulations, 18 CFR 2.61; promulgated by Order No. 279, March 31, 1964, 31 FPC 750, 29 F.R. 4873.)

A general application of the standards herein proposed would not necessarily result in savings to consumers. Responses to the notice of proposed rulemaking demonstrate that while certain of the provisions might be beneficial as to specific pipeline companies, they would not be desirable as to other pipeline companies and the application of the standards might be such as to require investment by producers even in instances where not necessary. We have found that the proposals in this rulemaking proceeding have been complied with in many gas sales contracts and that in other cases the specific pipeline companies purchasing gas either do not require the proposed prepayment provisions for efficient operation of their systems, or have entered into contracts with the producers which contain provisions meeting their specific needs. Accordingly, most of the proposed provisions would serve no valid purpose today. We do recognize, however, that where pipeline companies have made prepayments for gas not taken, a broad approach to insure the ability of the companies to make-up this prepaid gas is necessary. This approach should be consistent with one which does not result in a substantial unjustified burden to the producer who must make the gas available. We find that a lengthening of the make-up period to a minimum of 5 years will provide relief for those pipeline companies that might otherwise incur substantial prepayment balances on their books and will lessen the risk of future forfeiture and loss of the payments. Since the independent producers already will have received payment for this gas, we do not foresee any substantial harm to them by the imposition of the requirement that contracts entered into after the effective date of this order shall contain make-up provisions permitting the pipeline companies to make-up prepaid gas within a minimum of 5 years from the date the prepayment is made. During the 5-year period before termination of the contract, the make-up period will be shortened consistent with the time remaining under the contract.

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[1] Amerada Petroleum Corporation; Ashland Oil & Refining Company; Associated Gas Distributors; Perry R. Bass; The California Company, a division of California Oil Company; Cities Service Company, Cities Service Oil Company, Columbian Fuel Corporation; Columbia Gas System Companies; Consolidated Gas Supply Corporation; Continental Oil Company; El Paso Natural Gas Company; Forest Oil Corporation; Gulf Oil Corporation; Humble Oil & Refining Company; Hunt Interests; Independent Natural Gas Association of America; Independent Petroleum Association of America; Kansas Corporation Commission; Kansas-Nebraska Natural Gas Company, Inc.; Kerr-McGee Oil Industries, Inc.; Marathon Oil Company; Natural Gas Pipeline Company of America; Northern Natural Gas Company; Pan American Petroleum Corporation; Panhandle Eastern Pipe Line Company; Pennsylvania Public Utilities Commission; Philadelphia Gas Works Division of The United Gas Improvement Co.; Phillips Petroleum Company; Railroad Commission of Texas; Shell Oil Company; Sinclair Oil & Gas Company; Socony Mobil Oil Company, Inc.; Southern Natural Gas Company; Sun Oil Company; Superior Oil Company; Tennessee Gas Transmission Company; Texaco Inc.; Texas Eastern Transmission Corporation; Texas Gas Transmission Corporation; Transcontinental Gas Pipe Line Corporation; Trunkline Gas Company; Union Oil Company of California; Warren Petroleum Corporation.

In other respects we find that, at this time, it is unnecessary that the remaining portions of our proposed rule become effective and we will terminate the proceeding as to them.

Since the initiation of the proposed rule in 1961, the Commission, in a number of opinions and orders, has conditioned the issuance of numerous producer certificates making them subject to the final outcome of Docket No. R-199. Each of those producer certificates will be subject to the rule which is prescribed herein. Amendments to the rate schedules for each of these producers should be filed within 60 days from the issuance hereof to provide a make-up period of no less than 5 years in the event there are prepayments for gas not taken for those contracts which have provided a make-up period of less than 5 years.

*The Commission further finds* in view of the foregoing and upon consideration of all relevant matters presented, including the arguments, contentions, suggestions and other views expressed in the comments received, it is necessary and appropriate in the administration of the Natural Gas Act that the Regulations under the Natural Gas Act be amended as herein provided.

*The Commission*, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 4, 5, 7 and 16 thereof (52 Stat. 822, 823, 825, 830; 56 Stat. 83; 15 U.S.C. 717c, 717d, 717f and 717o), *orders:*

(A) Part 154, Subchapter E, Regulations Under the Natural Gas Act, Chapter I, of Title 18 of the Code of Federal Regulations, is amended by adding a new § 154.103 and revising § 154.110 as follows:

§ 154.103 Limitations on provisions in rate schedules relating to make-up period for taking prepaid-for gas.

Contracts for the transportation or sale of natural gas, subject to the jurisdiction of the Commission, executed after February 1, 1967, will be rejected if they contain provisions precluding buyer from receiving, at no additional charge per Mcf, gas paid for but not taken at any time during a period of at least five years immediately following payment for such gas not taken, subject to contract provisions to protect against drainage. If the contract terminates before the end of the minimum five-year make-up period, a shorter make-up period, consistent with the time remaining under the contract, will be permitted.

* * * * * * *

§ 154.110 Applicability of §§ 154.92 through 154.103.

Sections 154.92 through 154.103 shall be applicable only to those persons specified in § 154.91 and shall not apply to small producer sales made under small producer certificates issued pursuant to § 157.40 of this chapter.

(B) Part 157 of the said Title 18 is amended by revising *Exhibit B* in § 157.25 to read as follows:

§ 157.25 Necessary exhibits.

There shall be filed * * * the following exhibits:

* * * * * * *

*Exhibit B. Contracts.* Conformed copy of each contract for sale or transportation of gas for which a certificate is requested: *Provided, however,* That contracts on file with the Commission in other proceedings may be included by reference as heretofore provided in § 157.24(b); *And provided further,* That acceptance of contracts hereunder shall not be construed as approval of the rates therein contained under Part 154 hereof or under the Natural Gas Act. On or after April 2, 1962, the application shall be rejected if any contract submitted in support thereof contains any price-changing provisions other than those defined as permissible in § 154.93 of this chapter. The application will be rejected if any contract, executed after February 1, 1967, submitted in support thereof contains any make-up provisions proscribed by § 154.103 of this chapter (Secs. 4, 5, 7, 16, 52 Stat. 822, 56 Stat. 83; 15 U.S.C. 717c, 717d, 717f, and 717o).

(C) In all other respects the proceeding herein is terminated.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNION ELECTRIC COMPANY, PROJECT NO. 2277

### ORDER APPROVING AMENDED EXHIBITS K AND L DRAWINGS AND AMENDED EXHIBIT M FOR PROJECT

(Issued January 18, 1967)

On March 14 and August 1, 1966, Union Electric Company, licensee for Taum Sauk Project No. 2277, filed for Commission approval amended Exhibits K and L drawings and amended Exhibit M for the constructed project, located on the East Fork of Black River at its confluence with Taum Sauk Creek, in the vicinity of Lesterville, Missouri.

The amended exhibits were filed pursuant to Article 16 of the license and reflect certain changes in the project made during construction for reasons of topography, geology, construction economics and engineering considerations, which consist of: *at Upper Dam*—an extension of parapet wall to an elevation of 1599 feet; the addition of an access tunnel at north end of dike and the sealing of the entire reservoir floor with hot-mix asphalt; *at Lower Dam*—a change in the flow control structures consisting of an 8-foot by 10-foot sluiceway at elevation 710 feet, with sliding gate at upstream end, and an auxiliary 20-inch sluice gate; *at Pressure Tunnel*—change from an inclined shaft from the upper reservoir to a vertical shaft extending down to about elevation 1,054 feet, with a decrease in the slope of the remaining part of the tunnel; and *at Generating Station*—a slight realignment of tailrace and power station; relocation of switchyard to a site above water conduit, with relocation of roads to suit such relocation; a decrease in elevation of centerline of turbines from 711 feet to 703 feet; and a change in the crane to a semi-gantry type with an elevated upstream rail.

The amended exhibits show also the addition to the project of such structures as: a visitors center, a superintendent's residence, a barrier to prevent the deposit of gravel in the excavated channel during flood flows in the East Fork of the Black River to insure an adequate flow of water to the pumps at minimum lower reservoir water level, and a 34.5 kv substation (to provide service to a wholesale customer in the area) which is located on the project site for reasons of economy.

The changes described above have been reviewed by our staff and are considered satisfactory.

*The Commission finds:*

The following described amended Exhibits K and L drawings and amended Exhibit M conform to the Commission's rules and regulations and should be approved as part of the license for the project, and license Exhibit K (FPC No. 2277-2), Exhibit L, Sheets 1 through 5 (FPC Nos. 2277-3, -11, -5, -6 and -7, respectively) and Exhibit M filed in the Commission on June 10, 1960, which have been superseded, should be eliminated from the license for the project:

*Amended Exhibit K:* (FPC No. 2277-12), revised by the licensee and refiled on August 1, 1966.

| Amended exhibit L | F.P.C. No. | Title: Taum Sauk Project |
|---|---|---|
| Sheet 1 | 2277-13 | Lower Dam—Site Plan and General Design. |
| Sheet 2a | 2277-14 | Upper Pool—Plan and Sections. |
| Sheet 2b | 2277-15 | Upper Pool—Sections and Details (as Constructed). |
| Sheet 3a | 2277-16 | Pressure Tunnel—Plan and Profile. |
| Sheet 3b | 2277-17 | Pressure Tunnel—Sections and Details. |
| Sheet 4 | 2277-18 | Power Station and Channel—Site Plan. |
| Sheet 5a | 2277-19 | Power Station Plans. |
| Sheet 5b | 2277-20 | Power Station and Substation Sections. |

*Amended Exhibit M:* Entitled "General Description of Mechanical, Electrical and Transmission Equipment", filed with the Commission on March 14, 1966.

*The Commission orders:*

The amended Exhibits K and L drawings and amended Exhibit M described in the finding above are hereby approved as part of the license for Project No. 2277, and the license exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP67-142

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 18, 1967)

On November 14, 1966, United Gas Pipe Line Company (Applicant) filed in Docket No. CP67-142 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act (and Section 157.7(b) of the Regulations under the Act) for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and operation of gas purchase and gathering facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate during the calendar year 1967 facilities to enable it to take into its certificated main pipeline system natural gas which it will purchase from time to time from new sources of supply in producing areas generally coextensive with its system.

The total estimated cost of the proposed facilities will not exceed $4,000,000, with the total cost of any single project not to exceed $500,000. The construction will be financed out of current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 12, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, statements under oath in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $4,000,000, with no single project to exceed a cost of $500,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to construct during the calendar year 1967 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above statements under oath in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $4,000,000, with no single project to exceed a cost of $500,000, and shall not be interpreted as authorization to attach new customers or to increase the volume of sales to existing customers.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2 AND AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. RI60-18, ET AL.

### ORDER DENYING MOTIONS FOR RECONSIDERATION OF TIME LIMITATIONS

(Issued January 20, 1967)

On January 6, 1967, *supra*, p. 66, we issued an order in the above-captioned proceeding extending the times for filing exceptions to the initial decision to February 28, 1967, and briefs in opposition to exceptions to April 10, 1967. The order also waived the usual fifty page limit on exceptions and scheduled a two-day oral argument for May 15 and 16, 1967.

Two motions have been made for reconsideration of our order. On January 11, 1967, Shell Oil Company, *et al.*[1] submitted a filing in which they request that the maximum limitations on exceptions and replies to exceptions be extended to March 30 and May 19, 1967, respectively. They also ask that the time allowed for oral argument be extended to three days. The Associated Gas Distributors, in a motion filed January 12, 1967, propose that the final dates for the exceptions and replies be reduced to February 20 and March 27, 1967, and that the oral argument be held on April 4 and 5, 1967.

We have considered fully the arguments made by the petitioners, Shell Oil Company, *et al.*, both in their original motion[2] and in the instant motion for reconsideration. In our opinion, the briefing schedule fixed in our order is adequate and no additional time is necessary or warranted. At the same time, we do not believe that the extensions permitted in the order are unduly generous or that consumer protection will be imperiled to any significant extent by our adherence to the schedule previously determined. The limitation of the oral argument to a maximum of two days likewise was decided upon after reasoned consideration; the argument for additional time for this purpose is not persuasive. Accordingly, we shall adhere to the time schedule as originally set in our order.

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[1] Other signatory producers are Mobil Oil Company, The Superior Oil Company, Pan American Petroleum Corporation, Gulf Oil Corporation, Humble Oil & Refining Company, Texaco Inc., Phillips Petroleum Company, Amerada Petroleum Corporation.

[2] The same dates were requested in a motion filed January 6, 1967.

Several other parties have moved either to extend or reduce the time to file exceptions to the presiding examiner's decision. The present order also disposes of their requests.

*The Commission orders:*

The motions filed January 11 and 12, 1967, for reconsideration of our order extending time for filing exceptions and replies thereto, waiving page limitation, and fixing date of oral argument, issued January 6, 1967, are denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## GRAND RIVER DAM AUTHORITY, PROJECT NO. 2183

### ORDER APPROVING EXHIBIT L DRAWINGS

(Issued January 20, 1967)

On April 27, 1966, Exhibit L drawings were filed, for Commission approval, by engineering consultants, on behalf of Grand River Dam Authority, licensee for Project No. 2183, to show the project "As Built". The project, known as the Markham Ferry Project, is located on Grand (Neosho) River in the State of Oklahoma.

The drawings, which were filed pursuant to license Article 5, reflect minor changes to the project made during construction and, together with certain license Exhibit L drawings, show the Markham Ferry project as presently constructed. The "As Built" changes include: (1) enlargement of the working bay area at the south end of the powerhouse in order to provide additional space for maintenance and storage purposes with a corresponding decrease in the length of the non-overflow abutment section of the dam, without affecting the safety of the dam structure or its spillway capacity; (2) the construction of a control building on the bluff at the south end of the dam to house the licensee's system dispatching center and operating controls for the Markham Ferry Project; (3) modification of the boundaries of the switch yard to accommodate additional switchgear to be installed when the licensee's upstream Salina Pumped-Storage Project No. 2524 is completed; (4) modification of the project parking areas in various locations to accord with actual terrain conditions, with a resultant relocation of the powerhouse road to connect with the modified parking areas; (5) elimination of the concrete cutoff wall in the core of the earthen embankment section of the dam which, as contemplated by the license drawings, was found to be unnecessary as indicated by subsequent actual rock foundation conditions found during construction; (6) a change in the general cross-section of the powerhouse design to accommodate the design of the turbine subsequently installed which, in turn necessitated modifications of other details of the generating unit, such as the elevation of the bottom of the intake, the shape of the intake, the elevation of the centerline of the distributor, the depth of the draft tube, and changes in the elevations of the galleries that provides access to the turbine pit and to the draft tube to correspond with other changes in the general turbine design. The aforementioned changes have not caused a decrease in project operation efficiency, nor a material increase in project construction costs, nor an impairment of the general scheme of hydroelectric development, and are satisfactory.

The Chief of Engineers, Department of the Army, has approved the plans of the project structures affecting navigation pursuant to Section 4(e) of the Federal Power Act.

*The Commission finds:*

The following designated and described Exhibit "L" "As Built" drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project, and license Exhibit L, Sheets 1, 2, 6 and 7 (FPC Nos. 2183-17, -18, -22 and -23, respectively), which have been superseded, should be eliminated from the license for the project:

| Exhibit "L" "As Built" | F.P.C. No. | Title: Markham Ferry Project Dam and Power House |
|---|---|---|
| Sheet 1 | 2183-26 | Plan and Elevation. |
| Sheet 2 | 2183-27 | Earth Embankment. |
| Sheet 3 | 2183-28 | Revised Power House and Intake Transverse Sections. |
| Sheet 4 | 2183-29 | Revised South Nonoverflow Section. |

*The Commission orders:*

The Exhibit "L" "As Built" drawings designated and described in above finding are hereby approved as part of the license for Project No. 2183, and the license Exhibit L drawings described in the same finding as being superseded are hereby eliminated from the license for the project.

## OPINION NO. 512

## COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP65-102; ATLANTIC SEABOARD CORPORATION, CP65-122; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CP65-181; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, UNITED NATURAL GAS COMPANY AND NORTH PENN GAS COMPANY, CP65-182; UNITED FUEL GAS COMPANY, CP65-198

### OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AUTHORIZING ABANDONMENT

(Issued January 24, 1967)*

### *Syllabus*

1. While Seaboard would undoubtedly lose some load and not show as high rate of growth, it has not proven that diversion of Commonwealth and Washington load to another pipeline would be detrimental to Seaboard and its customers to any significant degree and ignores possibility of off-setting sales elsewhere. P. 126.
2. Economic losses to Seaboard resulting from diversion of Washington and Commonwealth load are in no way comparable to substantial benefits which would accrue to latter and their customers from purchase of gas from Transcontinental. P. 127.

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*Initial decisions appear on pp. 137, 161. Stay denied by order issued February 14, 1967; see also order denying rehearing and oral argument issued March 24, 1967, 37 FPC 310, 591. Affirmed, *Atlantic Seaboard Corp. v. F.P.C.*, 397 F. 2d 753 [CA4-1968].

3. Any possible effects of loss of markets should be considered on a system-wide basis—there is nothing in record to show that loss of market to Seaboard involved here would have any effect on its parent's [Columbia Gas] system financing. PP. 127, 128.
4. Possible losses of market by Seaboard, subject to Commission control, should not prevent approval of Transco's present proposal with immediate benefits accruing to Washington, Commonwealth and their customers. P. 128.
5. Since the service with respect to additional volumes of gas promises to offer greater benefits when supplied by Transco than by Seaboard, Commission *grants* certificates to former. P. 129.
6. It would not be proper to make a determination of Seaboard's partial requirements case here; such determination is not necessary, for estimated load diversion from Commonwealth and Washington is so limited that a PR schedule is not needed to enable Commission to decide whether to grant certificate for additional gas sales by Transco rather than Seaboard. PP. 129, 130.
7. *Distinguishing El Paso,* Commission *concludes* that a pipeline has no vested interest in a market that must be perpetually protected by regulation. P. 130.
8. It is axiomatic that utilities are natural monopolies and unbridled competition within utility sector would lead to greater costs to detriment of consumers and utilities themselves; however, a monopoly should not be automatically and consistently protected where it is demonstrated that competition would produce greater public benefits. P. 130.
9. Prior cases favor introduction of an element of competition where its operative effect will tend to promote public interest; this reflects sound regulatory policy based squarely upon policies underlying Gas Act. P. 131.
10. Record indicates that potential competition afforded by Transco has already benefited public interest and promises to do so even further in future. P. 131.
11. Regulation can operate to control both the nature and the scope of competition in the natural gas industry. P. 131.
12. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity and *authorizes* abandonment of service.

Commissioner Carver *concurring.*

*Giles D. H. Snyder, Leonard Sargeant III, C. E. Goodwin, W. C. Hart* and *Raymond Andrews, Jr.* for Columbia Gulf Transmission Company, Atlantic Seaboard Corporation and United Fuel Gas Company.

*Thomas F. Ryan, Jr., Richard J. Connor, William N. Bonner, Jr.* and *R. V. Loftin, Jr.* for Transcontinental Gas Pipe Line Corporation.

*Charles E. McGee* and *Richard Di Valerio* for United Natural Gas Company.

*George Failey, Norman O. Besheer* and *Francis J. Walsh* for North Penn Gas Company.

*C. Belden White, II* for Public Service Commission of the District of Columbia.

*Joseph C. Bruno, Herbert E. Squires* and *Alan R. Squires* for Pennsylvania Public Utility Commission.

*Leo A. Larkin* and *Francis I. Howley* for City of New York.

*C. Oscar Berry, Reuben Goldberg* and *Karl Michelet* for Washington Gas Light Company.

*James O. Watts, Jr.* for Commonwealth Natural Gas Corporation.

*James A. Biddison* for Baltimore Gas and Electric Company.

*James O'Malley, Jr., Halcyon G. Skinner, Leon A. Allen* and *Eugene G. Thomas* for Consolidated Edison Company of New York, Inc.

*William S. Tarver, Hugh J. Morgan* and *Lewis Carroll* for Southern Natural Gas Company.

*Stanley M. Morley* and *Louis Flax* for Carolina Pipeline Company.

*Edwin H. Russell, Harry G. Hill, Jr.* and *Mrs. Barbara M. Suchow* for Brooklyn Union Gas Company.

*Harry S. Littman* and *Dale A. Wright* for Piedmont Natural Gas Company, Inc.

*John C. Sinclair* for Delaware Power & Light Company.

*Allan Coates, Albert G. Normans* and *Jacob Goldberg* for Atlanta Gas Light Company.

*J. Harry Mulhern, James R. Lacey* and *Edward S. Kirby* for Public Service Electric & Gas Company.

*John A. McGrath* for Fuels Research Council, Inc., National Coal Association and United Mine Workers of America.

*Charles R. Brown, Norman A. Flaningam, C. William Cooper* and *Thomas A. White* for Consolidated Gas Supply Corporation.

*D. P. McDevitt, S. G. Miller, H. P. Sullivan* and *Donald Blanken* for Philadelphia Electric Company.

*Robert W. Maris* and *William T. Coleman, Jr.* for Philadelphia Gas Works.

*Phoebe Eppes Gordon, John E. Freese* and *Michael E. Shea* for Lynchburg Gas Company.

*James N. Horwood* and *Russell B. Mamone* for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

BAGGE, *Commissioner:*

The problem before us here is raised by the competitive applications of Transcontinental Gas Pipe Line Corporation (Transco) and Atlantic Seaboard Corporation (Seaboard), a member of the Columbia System, to supply additional gas to Washington Gas Light Company (Washington), which serves Washington, D.C. and vicinity, and to Commonwealth Natural Gas Company (Commonwealth), which serves parts of Virginia. These companies have in the past been served solely by Seaboard.

These consolidated proceedings also involve: (1) Noncompetitive expansions of Transco and the Columbia System; (2) Transco's proposed substitute service to Consolidated Edison Company of New York, Inc. (Con Ed) to provide Con Ed with an additional 20,075,000 Mcf of natural gas annually for use as boiler fuel; and (3) the development of the Wharton Storage Field in Pennsylvania by Transco, United Natural Gas Company and North Penn Gas Company. These matters are all the subject of this opinion except the service to Con Ed which is still before the Presiding Examiner.

### *Facts*

The Columbia System extends from Louisiana to New York, and through various affiliates, serves customers in Ohio, Pennsylvania, New York, West Virginia, Maryland and other states. Columbia Gulf is the transporter for United Fuel of gas United Fuel purchases in Louisiana. Columbia Gulf proposed in Docket No. CP65–102 to construct 143.6 miles of 30-inch mainline loops and 17.4 miles of 30-inch loop on its East Lateral in Louisiana. These facilities were estimated to cost $22,596,100 and were authorized under temporary certificates issued June 17, 1965, as amended March 29, 1966, which permitted the transportation of up to 1,155,000 Mcf per day (14.73 psia) of natural gas for United Fuel.

United Fuel sought authorization in Docket No. CP65–198 to construct and operate 22.1 miles of 24-inch loop pipeline and a new compressor station and to operate 7.5 miles of existing pipeline as part of its high-pressure system, all in West Virginia. It also sought to abandon certain facilities in West Virginia including 33.2 miles of 20-inch pipeline and two compressor units but has since filed an amendment to its original application deleting its request to abandon this line on the ground that the line can be used at low pressure for gathering local gas. The new facilities were estimated to cost $4,709,100, and United Fuel, by the Commission's letter-order of June 17, 1965, was authorized to construct them and make sales and deliveries to its jurisdictional customers.

Seaboard sought authorization in Docket No. CP65–122 to construct 10 miles of 36-inch looping pipeline in West Virginia and 15.9 miles of 26-inch pipeline in Baltimore County, Maryland to replace 20-inch pipelines. Seaboard was given temporary authorization on June 17, 1965 to construct the facilities estimated to cost $4,189,000, and to deliver limited amounts of gas to its jurisdictional customers.

Washington and its subsidiary, Shenandoah Gas Company, have a joint commitment effective December 1, 1964 to purchase a total of 480,000 Mcfd of contract demand (CD) gas from Seaboard. In this proceeding Seaboard proposes to deliver maximum daily volumes of 521,500 Mcfd. In the June 17, 1965 letter-order granting a temporary certificate, Washington's contract demand was increased to 493,500 Mcfd, which was all it requested. Upon further application by Seaboard, however, the Commission on September 21, 1965, granted a temporary certificate to Seaboard for the full deliveries requested without prejudice to a determination of the competitive issues.

Commonwealth is now receiving gas at a contract demand of 171,800 Mcfd from Seaboard and asks for no more. This limitation was likewise imposed by the Commission in its June 17, 1965 letter-order, but by letter-order of September 24, 1965, Seaboard was permitted without prejudice to deliver 182,400 Mcfd, the full amount proposed by Seaboard.

Transco owns and operates a pipeline which began operations in 1950. It extends from Texas to New York and serves numerous distributing companies. In its application in Docket No. CP65–181, Transco proposed to construct and operate gathering facilities in Louisiana, mainline facilities in Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Pennsylvania and New Jersey and facilities on its Leidy line in New Jersey and Pennsylvania. These facilities have been authorized under temporary certificates by the Commission on June 25, 1965, October 29, 1965, and June 1, 1966, without prejudice to the Commission's final determination in the competitive proceedings.

In its application in CP65–181, Transco also seeks authority to render CD service to Washington up to 55,000 Mcfd and storage service (GSS) up to 49,000 Mcfd. Similarly, Transco proposes to serve Commonwealth with up to 27,700 Mcfd of CD service and 2,000 Mcfd of GSS service.

By order of March 30, 1965, the Commission consolidated the five applications involved herein. Hearings were held between June 1965 and February 1966. On April 29, 1966, the Con Ed boiler fuel issue was deferred to further proceedings before the same Examiner, who on June 13, 1966, issued a decision which would have granted certificates to: (1) Transco for the mainline facilities proposed in Docket No. CP65–181; (2) Transco, United Natural and North Penn for the development of the Wharton Storage Field in Docket No. CP65–182; and (3) Seaboard, United Fuel and Columbia Gulf for the construction and operation of facilities and the sale of gas as proposed in Docket No. CP65–122, CP65–198 and CP65–102, respectively. The Examiner authorized all of the facilities for which the applicants had been granted temporary certificates, but expressly excepted the proposed substitute service for Con Ed and the competitive service to Washington and Commonwealth.

On September 28, 1966, *infra*, p. 161, Examiner Francis L. Hall issued a decision in which he dealt with the competitive service to Washington and Commonwealth. The Examiner found that the proposed purchase of gas from Transco by Washington and Commonwealth would reduce the rate of growth of Seaboard and the Columbia System, that Seaboard had fulfilled its public utility obligations to Washington, and that Transco's presence in Seaboard's market could be regarded as a usurpation of a market rather than competition for a market. While he found that purchase of gas from Transco would result in substantial cost reduction to Washington and Commonwealth, he granted a certificate to Seaboard to make the additional sales and denied Transco's application.

Exceptions to the Examiner's decision have been filed by Transco, Washington, Commonwealth, Lynchburg Gas Company, the Public Service Commission of the District of Columbia, the State Corporation Commission of Virginia and the staff. Briefs opposing exceptions have been filed by Seaboard, Transco, and the Coal Interests.[1]

### *The Issues*

The critical issues with respect to the competitive service aspect of this decision are: (1) What advantages, if any, will accrue to Washington, Commonwealth and the public which they serve from the receipt of part of their requirements from Transco? and (2) What detriment will inure to Seaboard, the Columbia System and the public which they serve as a consequence of a loss of sales to Transco?

### *Discussion*

*Benefits to Washington and Commonwealth from Service by Transco:*

One of the most significant factors in this case is the saving in purchased gas costs which will inevitably result if Washington and Commonwealth purchase part of their requirements from Transco. This provides the motivation for Washington's and Commonwealth's position in this proceeding. The D.C. and Virginia Commissions strongly advocate the proposed purchases. It is undisputed that the benefits are substantial. The scope of the savings vary, however, depending upon whether the computation of the extent of the savings are based upon: (1) Seaboard's old tariff (Seventh Revised Volume No. 1); or upon its new proposed tariff (Eighth Revised Volume No. 1); (2) Seaboard's proposed contract demand of 360,000 Mcfd or Washington's proposed 301,000 Mcfd, and (3) Transco's rate which was in effect at the time of the hearing or its lower present rate.

Seaboard's old tariff contains a billing demand of $2.747 per Mcf per month and a commodity charge of 31.5905 cents per Mcf, and the new tariff contains a billing demand of $3.12625 per Mcf per month and a commodity charge of 28.372 cents per Mcf, all adjusted to a 1025 Btu equivalent. The new tariff also contains a winter service (WS) schedule with a demand charge of $1.28125 per Mcf per month and a volume charge of 1.64 cents per Mcf per month. Compared with these rates Transco, on January 1, 1965 (the time of the hearing), had a demand charge of $3.30 per Mcf per month and a commodity charge of 23.3 cents per Mcf. The present rate is now $3.13 per Mcf per month with a 22.7 cent commodity charge. Transco also has a GSS schedule.

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[1] Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America.

Seaboard's new Eighth Revised Volume No. 1 was filed on March 31, 1965, suspended for one day and allowed to go into effect subject to refund on May 16, 1965, in Docket No. RP65–49. The new tariff contains a lower commodity charge and a higher demand charge than the old tariff, and it inaugurates a winter service (WS) schedule. Seaboard alleges that it is estimated to bring about a rate reduction to Seaboard's customers amounting to $2,758,400 in the year 1966, growing to $3,564,700 in 1968.

At a prehearing conference on November 15, 1966, settlement rates were proposed in Docket No. RP65–49 representing further rate reductions on the part of Seaboard amounting to $1,800,000 applied to its customers. The settlement rates include a demand charge of $3.25 per Mcf per month and a commodity charge of 27.5725 cents per Mcf. The WS schedule shows a demand charge of $1.00 per Mcf per month and a contract quantity charge of 1.3 cents per Mcf each month of the year.

As to the appropriate contract demand for gas, it appears that in conferences between Washington and Seaboard, Seaboard started out with 400,500 Mcfd but later lowered it to 360,000 Mcfd. Washington considered this level reasonable. Later in the conferences Washington indicated it would like a still lower contract demand but did not designate the exact amount until Seaboard made its filing of its new rates on March 31, 1965. Washington protested the filing with respect to the billing demand under the WS rate schedule, and Seaboard showed a willingness to make a modification here. On May 24, 1965, Washington demanded that the initial CD level be 301,000 Mcfd and made a formal nomination on June 18, 1965.

The Examiner adopted the computations made by Washington and Commonwealth. On the basis of Seaboard's new tariff and Transco's rates in effect January 1, 1965, the savings are as follows:

| | Commonwealth | Washington | |
|---|---|---|---|
| | | 301,000 Mcfd | 360,000 Mcfd |
| 1965 | | ($11,000) | $61,000 |
| 1966 | $197,162 | 199,000 | 51,000 |
| 1967 | 357,511 | 445,000 | 375,000 |
| 1968 | 494,052 | 545,000 | 413,000 |

Seaboard argues that Washington will obtain greater savings than it had originally anticipated through the use of the new tariff, Eighth Revised Volume No. 1. Thus it says that during the period 1966–68 full service by Seaboard under the new tariff with a contract demand of 360,000 Mcfd, would occasion economies of $2,506,000 over full service under the old tariff or $264,000 more than Washington would have saved by going from full service under Seaboard's old tariff to the combined service under the old tariff. A savings from a change from the old rate schedule to the new is not an argument against a further saving from the use of the combined service of Seaboard and Transco.

As shown above, substantial savings are achieved by Washington and Commonwealth purchasing part of their requirements from Transco. The savings would obviously be greater if Transco's latest rates are used. While the record does not permit an accurate estimate, it is our best judgment that savings of the same order or magnitude would result if the settlement rates proposed in Docket No. RP65-49 are used.

*Detriments to Seaboard and the Columbia System:*

Seaboard contends that the loss of part of the Washington and Commonwealth loads would seriously impair its growth and future stability. It is supported in this position by the Examiner. Both emphasize the values embraced in business morale and confidence which they argue would be adversely affected by a loss of market. It is shown that Washington and Commonwealth accounted for well in excess of 50 per cent of Seaboard's growth averaging about 7 percent during the period 1960-64, and that the loss of the Washington and Commonwealth loads would reduce Seaboard's growth in annual sales to about 2 per cent per year through 1968. Estimated annual purchases of gas and contract demands, assuming the Transco proposal is certificated would be as follows:

*Annual purchases (Mcf)*

| Year | Washington (exhibit 91) | | Commonwealth (exhibits 45 and 47) | |
|---|---|---|---|---|
| | From Seaboard | From Transco | From Seaboard | From Transco |
| 1965 | 71,013,000 | 1,700,000 | 42,640,072 | 328,600 |
| 1966 | 68,810,000 | 10,210,000 | 41,178,400 | 4,051,700 |
| 1967 | 69,848,000 | 14,980,000 | 39,588,900 | 7,338,500 |
| 1968 | 70,727,000 | 19,290,000 | 38,689,100 | 10,154,900 |

*Contract demands (Mcf) (includes winter service and storage service demands)* [2]

| Winter season | Washington | | Commonwealth | |
|---|---|---|---|---|
| | From Seaboard | From Transco | From Seaboard | From Transco |
| 1964-65 | 480,000 | | 171,800 | |
| 1965-66 | 493,500 | 28,000 | 171,800 | 10,600 |
| 1966-67 | 504,000 | 55,000 | 171,800 | 21,700 |
| 1967-68 | 517,500 | 82,000 | 171,800 | 29,700 |

[2] The tabulation does not reflect additional gas deliveries of 22,000 Mcfd from Transco to Washington beginning Nov. 1, 1968, as requested in Transco's application.

Source: Exhibits 45 and 63 (Schedules 14 and 22);

Total annual sales by Seaboard would be as follows (Ex. 45, Sch. 1):

1965—214,225,104 Mcf.
1966—213,699,200 Mcf.
1967—217,603,400 Mcf.
1968—222,273,200 Mcf.

The record shows that Washington and Commonwealth intend to reduce their annual purchases from Seaboard below historical loads and to purchase gas from Transco at load factors in excess of the load factors on their own systems. Thus Commonwealth proposes to make purchases from Transco at a 100 per cent load factor although it is estimated that the load factor for its purchases from Seaboard will decrease from 65.7 per cent in 1966 to 59.1 per cent in 1969. Similarly, Washington intends to purchase gas from Transco at load factors ranging down from approximately 100 per cent in 1965 to 53.04 per cent in 1968 with the result that the load factor of purchases from Seaboard would decline from 42.47 per cent in 1965 to 37.86 per cent in 1969.

While Seaboard would undoubtedly lose some load and would not show as high a rate of growth, we conclude that Seaboard has not proven that such a diversion of load would be detrimental to it and its customers to any significant degree. Furthermore, Seaboard ignores the possibility of off-setting sales elsewhere. Such a test is suggested in *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942, 947 (CADC–1964).

The possibility of such off-setting sales increase is made likely by Seaboard's new gas tariff, and even more likely by the settlement rates derived from the tariff. The record shows that the new rates were introduced in order to permit the company to become more competitive. Significantly, Seaboard's sales estimates were made without taking the lower commodity charge into account although Seaboard's witness admitted the lower commodity charge would have an effect on Seaboard's industrial sales. Since the tariff also removes a restriction on the use of gas for boiler fuel, this also could increase industrial sales in the future. The witness for Baltimore Gas and Electric Company testified that, as a result of the lower rates, its estimates should be raised by 900,000 Mcf for 1965 and 3,500,000 Mcf in 1966. This would almost wholly offset the expected load diversion in 1966.

Both the Examiner and Seaboard cite *Texas Eastern Transmission Co.*, 14 FPC 116, 120, and *Natural Gas Pipeline Company of America* (Oklahoma-Illinois), 34 FPC 771, Opinion No. 474, Docket No. CP62–243, *et al.*, September 9, 1965, for the proposition that the Commission will not permit a new supplier to take part of the base load service. In *Texas Eastern* the Commission refused to order Texas Eastern to serve part of the load of UGI, then served by Manufacturers Light and Heat Company, a Columbia company. The Commission noted that a saving was achieved not because Texas Eastern could sell gas more cheaply, but only because Texas Eastern would be inserted as a base load supplier leaving Manufacturers to supply part of the base load and the peak. Here, however, the Transco gas is cheaper and will produce substantial savings. In *Oklahoma-Illinois* the Commission denied the project in part because it would deprive the existing supplier and the consumers of the load balancing benefits of industrial customers and would result in higher prices.

From the economic standpoint Seaboard sees a short term impact on the recovery of fixed costs and, from a long range standpoint, the eventual and inevitable disruption of the historical load balance on the systems of The Columbia Companies. Seaboard would recover fixed costs under its new tariff on a total cost of service basis in the amount of 0.5 cents per Mcf.

Seaboard estimates that Washington's takes from it would decline 4,297,454 Mcf for the two years following October 31, 1966, from the previous year. The loss, Seaboard's witness admitted, would amount to but $20,000 over the two-year period or $10,000 after taxes. A similar computation with respect to Commonwealth would result in a loss of only about $9,000.

Under the proposed settlement rate the commodity charge would include 1.14 cents per Mcf of fixed charges. Using this figure, the loss over the same two-year period would be approximately $43,000 after taxes. In any case these losses are in no way comparable to the substantial benefits which would accrue to Washington, Commonwealth and their customers from the purchases of gas from Transco.

Seaboard, however, would extend the computation of losses to include 6.5 cents for fixed costs contained in the commodity charge of United Fuel, Seaboard's affiliated supplier, making 7 cents per Mcf of fixed costs on a total cost of service basis. At 7 cents per Mcf the loss on the basis of the reduction in Washington's take of 4,297,454 Mcf would amount to about $75,000 a year after taxes. The reduction for Commonwealth would be a little less, but these figures, representing System losses, should be compared with the entire Columbia System, for which the competitive loads of Washington and Commonwealth range up to only 2.6 per cent of the System sales.

In fact, any possible financial effects of the loss of markets should be considered on a system-wide basis. All of Seaboard's common stock is owned by its parent and financially the various companies are represented in the annual report on a consolidated basis. There is nothing in the record to show that the loss of market to Seaboard involved in this proceeding would have any appreciable effect on system financing.

As to long term effects, Seaboard contends that the loss of sales in view of its lack of storage will result in converting Columbia Gulf to a winter design system with idle capacity and higher costs. As costs increase, it argues, a vicious circle will develop by which Seaboard's customers will try to obtain an increasing proportion of their requirements from Transco. There is nothing in the record to support these speculations. We have already noted how Seaboard's lower rates make sales expansions likely. In any case, however, these problems are not before us. We shall consider any future proposals to divert load from the Columbia System on the basis of the record then before us. Such a record will show the proposed diversion in the light of the most recent information on Columbia's markets. Here the possible losses of market, which are subject to our control, should not prevent us from approving Transco's present proposal with immediate benefits accruing to Washington, Commonwealth and their customers.

*Relationship Between Seaboard and its Customers:*

The Examiner recounts the history of Seaboard, Commonwealth and Washington serving the growing needs of the Washington and Virginia areas and recites how the two distributing companies, nevertheless, turned to Transco for additional gas supplies. Washington argues that in the period before Seaboard filed its application on November 26, 1963, with respect to the Glady Storage Field (Docket No. CP64–117), it had a continuous need for storage service and that Seaboard was opposed to a separate storage service regardless of the need. Washington shows that its service area has unique characteristics in that it has a high demand for firm gas but little opportunity for interruptible sales. Thus in 1969 its average day requirements would approximate 250,000 Mcf while its peak in the 1969–1970 winter season is estimated at 868,000 Mcf, or a difference of 618,000 Mcf representing peaking needs. To meet this Washington has developed local propane and oil gas peak shaving facilities with a total capacity in the 1965–1966 season of 197,000 Mcf. By 1969–1970 it will have increased this capacity by 100,000 Mcfd by the development of the Brandywine Storage Field in Maryland, but its peak shaving capacity is still short of that needed so that it will be able to economize by storage or winter service from the pipelines.

There is some controversy in the record as to when Seaboard was notified of Washington's desire for storage service. The matter was discussed by representatives of Washington and Seaboard at a conference held after Washington had filed its petition to intervene in the Glady Storage proceeding in April 28, 1964. As early as February 1964, Washington had already begun negotiations with Transco and entered into its contract with Transco on June 10, 1964. It was not until March 31, 1965, however, that Seaboard filed its new rates offering storage service.

Similarly, Commonwealth presented evidence that it needed changes in Seaboard's rates including a storage service but, with the exception of a lower commodity charge, Seaboard had not acceded to its requests so that it eventually made a commitment to buy gas from Transco.

In our opinion the exact sequence of events in the relationship between Seaboard and its customers is not determinative in these proceedings. Our interest here is in an arrangement which will best serve the public interest. Storage service would be particularly useful to Washington because of the nature of its system, and both Transco and Seaboard are now offering storage service. Since the service with respect to the additional volumes of gas promises to offer greater benefits when supplied by Transco than by Seaboard, we are granting a certificate to Transco.

The Examiner is of the opinion that if Transco were authorized to serve Washington and Commonwealth, a 100% partial requirements (PR) rate schedule should be approved for Seaboard in order to protect Seaboard's market. This would require Commonwealth and Washington to pay minimum monthly and annual commodity charges to be computed on the basis of 100% of the customer's lowest monthly number of days' use and 100% of the average annual number of days' use of its contract demand. The Commission, on November 27, 1962, had originally approved 80 percent PR rate schedules for Seaboard (28 FPC 800) but the Commission's order was reversed and remanded for lack of evidence as to the need of protecting Columbia's customers who did not have an alternative supply of gas and as to the extent of deterioration of Columbia's markets that might be expected absent the PR rate. *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942 (CADC–1964). On remand the Examiner, in a decision issued July 14, 1966 in Docket No. G–16401, disallowed the PR rate schedules proposed by the Columbia System finding that the standards of proof required by the *Lynchburg* case had not been met.

In our opinion, as argued by Washington, Commonwealth and Lynchburg Gas Company, it would not be proper here to make a determination of the PR case. Moreover, this determination is not necessary for the estimated load diversion from Commonwealth and Washington is so limited that a PR rate schedule is not needed to enable us to decide whether to grant a certificate for the sale of the additional gas by Transco rather than Seaboard.

### *Competition*

It is the Examiner's opinion that the introduction of the degree of competition afforded by the certification of Transco must be denied because of the harm which could result to Seaboard and to the Columbia System. In support of his conclusion he cited *Texas Eastern Transmission Co.*,[3] *United States* v. *El Paso Natural Gas Co.*,[4] and *F.C.C.* v. *RCA Communications*.[5]

We conclude, however, that a pipeline has no vested interest in a market that must be perpetually protected by regulation. The cases cited by the Examiner do not so hold. The Court in *El Paso* was merely relating the usual consequences of one pipeline being in an area. It was not attempting to circumscribe the scope of competition in the natural gas industry. In *RCA* the Court held that the FCC had improperly relied, without analysis, on an assumed national policy in favor of competition. It said, in fact, that there can be no doubt that competition is a relevant factor in weighing the public interest.[6]

It is axiomatic that utilities are natural monopolies and that unbridled competition with the utility sector would lead to greater costs to the detriment of consumers and the utilities themselves. A monopoly, however, should not be automatically and consistently protected where it is demonstrated that competition would produce greater benefits to the public. In *Transcontinental Gas Pipe Line Corporation*[7] the Commission stated:

> We by no means intend to grant any company an exclusive right to serve a designated area, or to deny to consumers the benefits of more than one source of supply. Our objective is merely to protect the existing supplier from possible severe and unjustifiable harm resulting from the certification of an additional supplier, by requiring that a positive and convincing showing must be made to support the certification of such additional supplier.

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[3] 14 FPC 116. 120 (1955).

[4] 376 U.S. 651, 660, (1964) where the Court said that once the distributing contracts are made, the particular market is withdrawn from competition, and that competition is then for new increments.

[5] 346 U.S. 86, 91, 92, 96–97 (1953), where the Court held that competition is not of itself a national policy.

[6] 346 U.S. at p. 94.

[7] 21 FPC 399, 404, in which the Commission granted a certificate to Transco to sell gas to Lynchburg Gas Company as a second supplier.

In *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*,[8] cited by the Examiner and the parties, it was said, "Nothing in the Natural Gas Act suggests that Congress thought monopoly better than competition or one source of supply better than two * * *." In 1960 the Commission directed Transco to sell gas to the Lynchburg Gas Company (24 FPC 955). More recently, in *Transcontinental Gas Pipe Line Corp., et al.*,[9] the Commission granted a certificate to Southern Natural Gas Company to serve part of the Chattanooga market instead of the existing supplier, East Tennessee Natural Gas Company. To conclude, the cases favor the introduction of an element of competition where its operative effect will tend to promote the public interest. This reflects sound regulatory policy which is based squarely upon the policies underlying the Natural Gas Act.

In the present proceeding the record indicates that the potential competition afforded by Transco has already benefited the public interest and promises to do so even further in the future. The filing of Seaboard's new tariff with a reduced commodity rate and a WS schedule indicates the beneficial practical impact of the mere threat of Transco's competition. We shall not, in the administration of the Natural Gas Act, permit the kind of ruinous competition envisioned by the Examiner. That would constitute a detriment to the public. Regulation, however, can operate to control both the nature and scope of competition in the natural gas industry. Any further proposals by Transco to sell additional volumes of gas must be approved by us. We shall consider them in the light of the circumstances then prevailing.

### *Reliability of Service*

In granting a certificate to Transco to supply gas to Washington, we think it a distinct contribution to the reliability of service to this area to have a second supplier serving it on a regular basis. It is true, as the parties argue, that there are established interconnections between Seaboard and Transco including one at Dranesville, Virginia, and another at Rockville, Maryland, that could be used for emergency purposes. But service by Transco would establish a direct interconnection between Transco and Washington. The record shows that this would be at Dranesville or other points which the parties agree upon. Furthermore, Transco's becoming obligated to have capacity available to serve Washington is more assurance of continued service than reliance on gas being available from the Transco system only in the event of emergencies.

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[8] 169 F. 2d 881 (CADC–1948), certiorari denied, 335 U.S. 854.

[9] Opinion No. 493, 35 FPC 917.

### *Wharton Storage Field*

The joint application filed by Transco, United Natural and North Penn in Docket No. CP65–182 seeks authority to complete the development of the Wharton Storage Field in Potter and Cameron Counties, Pennsylvania. Without exception the Examiner found that the maximum possible deliverability might approach the 300,000 Mcfd claimed by the applicants. This would leave 99,515 Mcfd without a market (or 44,515 Mcfd if the substitute contract demand service to Consolidated Edison is denied). The staff, however, contrary to the Examiner, urges that the storage facilities, investment and expenditures of Transco in the field which are not necessary to meet GSS market requirements shall not be transferred from construction work in progress to gas plant in service or included in the rate base until they become used and useful.

Transco contends, however, that if staff's recommended condition could be physically carried out, it would deprive Transco's customers of flexibility in Transco's system. In our opinion, if Transco were to have storage capacity available to meet the needs of its customers it would have to have a reasonable excess, and this would be difficult to define because of the changing needs of its customers. Therefore, we shall not impose the staff's recommended conditions, but we conclude that the question whether a part of the Wharton Field is used and useful and includable in Transco's rate base could very well be raised in a rate proceeding. A determination there would then be based, not on Transco's estimates of what is required, but on the demands of its customers and its actual use of the Field.

### *Mainline Facilities*

Staff originally recommended that because of the pendency of Transco's Docket No. CP64–270 and the possibility that Transco would not be authorized to serve certain of the contested markets in that proceeding, no permanent authorization for mainline facilities be granted in Docket No. CP65–181. The Examiner, however, noting that Transco has pyramided one application on top of another, adopted Transco's suggestion, that a permanent certificate be granted but Transco be required to amend its latest application in Docket No. CP66–233 to reflect reduction of markets in Docket No. CP64–270, as occurred in *Transco*, Opinion No. 493, Docket No. CP64–270, issued June 8, 1966. Transco has filed an amendment to its application in Docket No. CP66–233 increasing the amount of sales which, it says, approximately offset the loss of markets in Opinion No. 493. The mainline facilities for which application is made here in CP65–181 would in any case be used and useful in this docket.

*The Commission further finds:*

(1) Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission. *Columbia Gulf Transmission Co., et al.*, 20 FPC 681.

(2) Atlantic Seaboard Corporation, a Delaware corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission. *Atlantic Seaboard Corp.*, 3 FPC 941.

(3) United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission. *United Fuel Gas Co.*, 4 FPC 534.

(4) Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission. *Transcontinental Gas Pipe Line Corp.*, 7 FPC 145.

(5) United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission. *United Natural Gas Co.*, 3 FPC 959.

(6) North Penn Gas Company, a Pennsylvania corporation having its principal place of business in Port Allegany, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission. *North Penn Gas Co.*, 3 FPC 936.

(7) The facilities hereinbefore described, as more fully described in the applications (as amended and supplemented) in this proceeding, are to be used for the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas proposed are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(8) Each of the above-named applicants is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) The applications of Columbia Gulf, United Fuel and Seaboard have not been shown to be required by the present or future

public convenience and necessity to the extent they provide for sales above the limits set forth below.

(10) The construction and operation of the proposed facilities and the transportation and sales of natural gas as authorized herein by all applicants, except for the sales referred to in (9) above and those related to the substitution of contract demand service to Con Ed., are required by the public convenience and necessity, upon the specific conditions herein set forth, and certificates therefor should be issued as hereinafter ordered and conditioned.

*The Commission orders:*

(A) Certificates of public convenience and necessity are hereby issued to Transco in Docket No. CP65-181, to Transco, United Natural and North Penn in Docket No. CP65-182, and to Atlantic Seaboard, United Fuel and Columbia Gulf in Docket Nos. CP65-122, CP65-198 and CP65-102, respectively, authorizing the construction and operation of facilities, transportation and sale of natural gas in interstate commerce as more fully described in their applications, as amended and supplemented, in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued in paragraph (A) above do not include permanent authorization to Transco to provide Con Ed with substitute service or to Atlantic Seaboard to provide service to Washington and Commonwealth in excess of the levels set forth in (C) below as proposed in Docket No. CP65-122.

(C) The certificates issued in (A) above shall be specifically conditioned upon the following terms:

(1) Columbia Gulf shall not transport more than 1,102,500 Mcf (at 14.73 psia) for United Fuel on any day.

(2) Deliveries by Atlantic Seaboard to its jurisdictional customers shall be limited to the following maximum daily quantities:

| *Customer* | *Maximum daily delivery (Mcfd at 14.73 psia)* |
|---|---|
| Baltimore Gas and Electric Company | 272,000 |
| Blue Ridge Gas Company | 2,800 |
| City of Charlottesville, Virginia | 12,100 |
| Commonwealth Natural Gas Corporation | 171,800 |
| Cumberland and Allegheny Gas Company | 21,000 |
| Lynchburg Gas Company | 7,000 |
| The Manufacturers Light and Heat Company | 54,000 |
| Roanoke Gas Company | 19,000 |
| Virginia Gas Distribution Corporation | 64,000 |
| Washington Gas Light Company | 493,500 |

(3) Deliveries by United Fuel to its jurisdictional customers shall be limited to the following maximum daily quantities:

| *Customer* | *Maximum daily delivery (Mcfd at 14.73 psia)* |
|---|---|
| Atlantic Seaboard Corporation | 716,570 |
| Bluefield Gas Company | 5,000 |
| Columbia Gas of Kentucky, Inc | 45,000 |
| Consumers Gas Utility Company | 1,119 |
| Gas Transport, Inc | 6,500 |
| Kentucky Gas Transmission Corporation | 606,200 |
| Luther Lusher | 30 |
| The Manufacturers Light and Heat Company | 335,000 |
| The Ohio Fuel Gas Company | 510,000 |
| The Ohio Valley Gas Company | 43,500 |
| Union Oil and Gas, Inc | 600 |
| Zebulon Gas Association, Inc | 40 |

(D) Transco shall submit to the Commission an annual report in a form satisfactory to the Commission showing pertinent injection, withdrawal and operating data, as well as additional cost incurred in the further development of the Wharton Storage Field, until either the full development program has been achieved or until it is determined that the maximum possible development has been reached.

(E) Permission for the abandonment by United Fuel of the facilities described in its application in Docket No. CP65–198 as amended is granted.

(F) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon compliance by the Applicants with all applicable Commission Regulations under the Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(G) The certificates issued herein to Atlantic Seaboard, Columbia Gulf, and United Fuel shall be void and without force and effect unless accepted in writing by all three Columbia Companies within thirty (30) days from the issue date of the order issuing such certificates.

(H) The certificates issued to Transco in Docket No. CP65–181 and to Transco, United Natural, and North Penn in Docket No. CP65–182 shall be void and without force and effect unless accepted in writing by Transco in Docket No. CP65–181 and by all three joint applicants in Docket No. CP65–182 within thirty (30) days from the issue date of the order issuing such certificates.

(I) Exceptions not granted are denied.

Commissioner Carver *concurring*.

CARVER, *Commissioner, concurring:*

I concur. These additional views state a disagreement not with the Commission's decision, but with *Lynchburg Gas Company* v. *Federal Power Commission*, 336 F. 2d 942 (CADC–1964), its legal underpinning.

*Lynchburg* controls us. In overturning the Commission's efforts to use its rate powers to ameliorate anticipatorily the detriment of which Seaboard again complains in the case decided today, the Court of Appeals enunciated the "net market loss" test to measure the validity of Seaboard's complaint. Unless a pipeline can show that encroachment upon its markets will result in a "net market loss" detriment, the benefit of cheaper gas from the new supplier must control the result.

This test has the merit of being easy to apply. For our purposes, the law requires it. But the Examiner was persuaded by Seaboard's argument that the test should be broader. He noted, and his decision reflected, future detriment as relevant.

Aided by the vigor of the Examiner's decision, and the eloquence of Seaboard's counsel, it is possible to foresee that if and when the time comes when the Company *can* show "net market loss", and by the *Lynchburg* test be then entitled to protection, that protection might have to be at the expense of a relatively limited number of customers, upon whom the burden of the protection would be relatively greater.

This is, as the Supreme Court described in *United States* v. *El Paso Natural Gas Company*, 376 U.S. 651 (1964), an industry with special characteristics:

> This is not a field where merchants are in a continuous daily struggle to hold old customers and to win new ones over their rivals. In this regulated industry a natural gas company (unless it has excess capacity) must compete for, enter into, and then obtain Commission approval of sale contracts in advance of constructing the pipeline facilities. * * * Once the Commission grants authorization to construct facilities or to transport gas in interstate commerce, once the distributing contracts are made, a particular market is withdrawn from competition.

By way of *dicta*, the Supreme Court went on to emphasize that "competition then is for the new increments of demand that may emerge with an expanding population and with an expanding industrial or household use of gas."

Whether "new increments of demand" would be more helpful than "net market loss" as a criterion for decision I cannot say. Proper administration of the Natural Gas Act ought to call for equitable sharing of both benefits and burdens among as broad a segment of consumers as possible.

The Court of Appeals in *Lynchburg* limited desirable regulatory flexibility. I express the hope that the matter will sometime be re-examined in that forum.

### INITIAL DECISION

### OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1966)

HALL, *Presiding Examiner:* Involved in this consolidated proceeding are five applications filed pursuant to provisions of the Natural Gas Act (Act). They seek authorization for (1) two pipeline expansion programs and (2) the last phase of the development and operation of the Wharton Storage Field in Pennsylvania.

One of the pipeline expansion programs is proposed by Transcontinental Gas Pipe Line Corporation (Transco) on its Texas-to-New York system, the other by three of the Columbia Gas System Companies, namely, Columbia Gulf Transmission Company (Columbia Gulf), United Fuel Gas Company (United Fuel), and Atlantic Seaboard Corporation (Atlantic Seaboard).

The connected Columbia Gulf-United Fuel-Atlantic Seaboard pipeline systems extending from Louisiana and other producing fields represent, *inter alia*, the line of their natural gas supply involved in the competitive proposals of Atlantic Seaboard, on the one hand, and Transco, on the other, to serve certain of the natural gas requirements of two distributors, namely, Washington Gas Light Company (Washington) and Commonwealth Natural Gas Corporation (Commonwealth). Historically, Atlantic Seaboard has been the sole pipeline supplier of Washington and Commonwealth. However, these two distributors now propose to purchase part of their future requirement from Transco while continuing to buy gas from Atlantic Seaboard.

This opinion disposes of the five applications with the exception of the two most important issues which will be the subject of subsequent separate Examiner decisions. The two primary issues to be disposed of later are: (1) Transco's proposed substitute service to Consolidated Edison Company of New York, Inc. (Con Ed) to provide Con Ed with an additional 20,075,000 Mcf of natural gas annually for use as boiler fuel, this being a matter which the Commission by order issued April 29, 1966, as amended May 13, has severed for further hearing commencing July 12. The further hearing will be concerned with the Department of Health, Education, and Welfare's (HEW) interest in the most effective use of gas by Con Ed in mitigating air pollution in New York City.[1] An explanation of the Con Ed service issue and the additional evidence desired by the Examiner in connection therewith are hereinafter set forth (*infra*, pp. 146–154). (2) The competitive issue involved in the applications of Atlantic Seaboard in Docket No. CP65-122 and Transco in Docket No. CP65-181, in which each seeks authorization to construct and operate facilities and to serve requirements of Washington and Commonwealth.[2] A separate decision on this vigorously contested issue, with which most of the consolidated hearing was concerned, will facilitate its consideration and disposition by the Commission and on court review, if any.

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[1] The hearing in the consolidated proceeding was held at intervals for a total of 65 days, concluding on February 4, 1966. Main and reply briefs were filed March 18 and April 11, 1966, respectively. Thereafter, on April 25, 1966, HEW applied for leave to intervene out of time. It attached to its petition to intervene a proposed brief limited to the air pollution issue raised in connection with the Con Ed sale. By order issued April 29, 1966, the Commission permitted HEW to intervene; severed the Con Ed sale from the remaining issues in the consolidated proceeding; and reopened the hearing record for the purpose of enabling the presentation of evidence relating to the most appropriate use to which the additional natural gas Con Ed seeks can be put in helping to alleviate the air pollution problem facing the City of New York.

In addition to the applicants and the Staff, numerous other parties were granted leave to intervene in the consolidated proceeding.

### THE APPLICATIONS

Transco's application in Docket No. CP65-181, as amended, proposes a system expansion of facilities estimated to cost $89,150,000[3] for the purpose of enlarging its pipeline and storage services. All of the proposed sales and services are to be rendered to its existing customers except the service to Washington and Commonwealth. Appendix "A" of this decision sets forth the specific services and facilities for which Transco seeks authorization.

The applications of the three Columbia Companies, namely, Columbia Gulf in Docket No. CP65-102 (involving an estimated investment of $22,596,100), United Fuel in Docket No. CP65-198 (involving an estimated investment of $4,709,100), and Atlantic Seaboard in Docket No. CP65-122 (involving an estimated investment of $4,189,000), all of which were supplemented and amended, propose interdependent system expansions providing for increased capacity and service to their existing customers for the 1965-66 winter. Included in the service proposed by Atlantic Seaboard for that winter is increased service to Washington and Commonwealth in competition with Transco's proposed service to these two distributors.

Appendix "B" of this decision sets forth the specific facilities and services for which the Columbia Companies seek authorization in Docket Nos. CP65-102, CP65-122 and CP65-198.

By their joint application in Docket No. CP65-182, Transco and its partners, United Natural Gas Company (United Natural) and North Penn Gas Company (North Penn), propose the final step in the development of the Wharton Field as a storage field. The estimated cost of the facilities in this application is $5,111,000.

The interdependence of the Columbia Companies' applications and the partially competing nature of such applications with the application of Transco caused the Commission, by order issued March 30, 1965,[4] to consolidate such applications for hearing. In addition, the joint application in Docket No. CP65-182 was consolidated with the other four because a portion of Transco's additional share of the Wharton Field is required to enable Transco to render all of the storage service in its Docket No. CP65-181.

### POSITIONS OF THE PARTIES

The parties to the consolidated proceeding agree that there are only three principal issues to be decided.

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[2] The applications of both Atlantic Seaboard and Transco represent normal expansions of their respective systems involving facilities for sales and service in no way involved in the competing aspect of this proceeding. It is the noncompetitive aspects of these and the other three applications—other than the Con Ed service issue—that this decision authorizes.

[3] As part of its application, Transco proposed the construction of a pipeline extension in South Carolina and North Carolina, called the "Tryon" extension, together with three meter stations having an estimated direct cost of $1,683,133. Because of the competitive nature of these proceedings and the attendant delay, Transco orally amended its application to eliminate the proposed construction of this line. Thereafter, authority to construct and operate the line was separately applied for (Docket No. CP66-150) and a hearing held. The matter is now pending before an Examiner for decision.

[4] The Commission's order issued March 30, 1965, also provided for the filing of supplements to the applications.

First, is the competitive issue involving service to Washington and Commonwealth which is to be the subject of a separate Examiner decision.

Second, is the contention of the Columbia Companies that the additional development of the Wharton Field, as proposed in Docket No. CP65–182, should not be authorized on the basis of the present record. This contention is hereinafter considered.

Third, there is the question, now severed for further hearing, of whether Transco should be permitted to serve Con Ed an additional 20,075,000 Mcf of natural gas annually for use as boiler fuel.

As to Transco's application in Docket No. CP65–181 and the three filed by the Columbia Companies in Docket Nos. CP65–102, CP65–122 and CP65–198, none of the parties oppose the granting of the certificates requested except for (1) the mutually exclusive service to Washington and Commonwealth for which both Transco and Atlantic Seaboard are seeking authorization, and (2) the severed Con Ed service issue.

Transco and the Columbia Companies, as well as a few of their customers required to do so, presented uncontradicted evidence that their proposals, to the extent approved herein, meet all of the conventional tests normally associated with certificate applications, namely, gas reserves, economic feasibility, financiability, facilities and markets, and the Examiner finds that such proposals have been fully substantiated. Detailed discussion of the uncontradicted evidence would serve no useful purpose.[8]

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[8] Were it not for the Con Ed service issue, included by amendment to the original application, and the fact that the applications of Transco and Atlantic Seaboard are partially competing, the four applications of Transco and the Columbia Companies would undoubtedly have been processed unopposed under the Commission's shortened procedure, the Commission's action being based upon an examination of and agreement with the supporting data contained in those applications.

In the Examiner's view, it was unnecessary for the noncompetitive aspects of this consolidated proceeding to have been tied into the applications covering the competitive aspects which the applicants had ample reason to believe would become embroiled in a lengthy hearing and bitter struggle. That is to say, the noncompetitive service could easily have been separately applied for to avoid the necessity of going through the routine of first requesting and obtaining temporary certificates and then having permanent certificates issued to them. In fact, the Examiner in his order of April 30, 1965, which preceded the prehearing conference held herein on May 7, 1966, pointed out that (Tr. 12)—

> Unless something unforeseen develops, the end result of this proceeding will probably be that, except for the additional service to be provided Washington and Commonwealth through Commission appraisal of the public interest as between the contending suppliers, the applications of both Transco and the Columbia Companies will be granted to the extent required to serve the added requirements of their existing customers. These existing customers have merely followed tariff-prescribed or routine procedure in nominating additional needs for 1965–66. Their involvement in this proceeding is not of their doing. Assuming a way out can be found, it seems to the Examiner that the existing customers (other than Washington and Commonwealth) ought not to be placed under a greater burden than if the limited competitive situation between the contending suppliers did not exist. The Examiner is therefore hopeful that through stipulation, issuance of temporary certificates, severance of noncompetitive aspects, waiver of cross-examination, or other appropriate or combination of means, the way out will be provided for the applicants and their existing customers to carry forward their annual construction and supply programs in a normal, unhampered and orderly way. No one need be reminded that go-stop planning results in major disruptions and consumer dissatisfaction.

In instances like those involved here, it appears that noncompetitive service and facilities should be applied for and acted upon by the Commission as a result of applications filed separate and apart from applications involving competitive service and facilities. Accordingly, in the light of the history of this case, the Examiner recommends that the Commission, in the future, require complete separation of competitive and noncompetitive facilities and services insofar as the filing of applications and Commission action thereon are concerned.

Moreover, most of the services and facilities proposed by Transco (other than the competitive service and facilities), and all of the facilities and most of the service proposed by the Columbia Companies (including 1965–66 service to Washington and Commonwealth) have been authorized by temporary certificates issued by the Commission (see Appendices "A" and "B"). The temporary certificates were issued (1) without prejudice to the determination of whether permanent certificates should be issued, and (2) to enable Transco and the Columbia Companies to meet the needs of their customers during the 1965–66 winter. Then, too, the Columbia Companies asserted a desire and need to construct and operate all of the facilities set forth in their applications irrespective of the outcome of the competitive service proposed to be rendered to Washington and Commonwealth, and the Commission permitted the facilities to be constructed and operated under temporary certificates in the light of this representation.

## APPLICATION FOR THE FINAL STAGE OF DEVELOPMENT AND OPERATION OF THE WHARTON FIELD

The joint application filed by Transco, United Natural and North Penn in Docket No. CP65–182 seeks authority for the fourth and last stage in the development and operation of the Wharton Field as a storage field for the purpose of increasing its capacity and deliverability to the joint applicants.[6]

The oval-shaped Wharton Field was originally a gas producing field. It is located in Potter and Cameron Counties, Pennsylvania, and includes some 8,700 acres. It extends for more than ten miles in a northeasterly direction and is about two miles wide at its widest point.[7]

The field has three basic areas called the First Fork (southwest end of the field), the East Fork (northeast end of the field) and the Main Pool (the remainder). The development of this storage field to date has been confined to the more permeable Main Pool area which is not of uniform permeability but can readily be classified into five areas based on permeability characteristics. United Natural, the operator of the field, has so far been unable to establish whether underground communication or movement of gas exists between the Main Pool and the two Fork areas.

While the development of Wharton to date has been limited to the Main Pool area, the full development program here proposed calls for the development of the East and First Fork areas for storage purposes and the full development of the Main Pool area. It is not planned to drill any additional wells in the two Fork areas under the full development program.[8]

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[6] The initial development of Wharton was authorized by certificate issued January 18, 1963, as amended (29 FPC 119, 210). Although the initial phase was to be the first of two stages of development, there followed two intermediate stages of development prior to the instant application proposing to fully develop the field (30 FPC 1335; 31 FPC 242).

[7] Gas was first discovered in Wharton's Oriskany formation as early as 1933 in the East Fork area but little gas was produced until many years later. The development of the natural gas production from the East and First Fork areas occurred before the development of the Main Pool, and between 1933 and 1947 substantially all of the gas that was produced from Wharton came from these two areas.

The first well was drilled in the Main Pool in 1948, and active development of this area for gas production occurred during that year and the next. As the Main Pool was developed, it proved to be considerably more permeable and produced more gas than the East and First Fork areas. Drilling in the entire Wharton Field resulted in 44 productive gas wells and 8 dry holes, of which 15 were located in the two Fork areas as of June, 1950. As a gas producing field, Wharton produced approximately 34 billion of an estimated 35 billion cubic feet of gas from the Oriskany Sand horizon.

[8] At present the First Fork has seven wells, the East Fork eight, and the Main Pool 25 wells.

The full development program contemplates the drilling of 42 new wells in the Main Pool, reconditioning one existing well, hydro-fracking existing wells when and if found necessary, adding storage field piping, and construction of additional 4,500 compressor horsepower at Transco's Station 535 in the Wharton Field.[9] The new wells, and the other parts of the full development program, are required in order that the critical requirements of 118,000 Mcf per day can be injected into Wharton on the last day of the injection season when the stabilized well head pressure is expected to be 3,600 psig and the compressor station suction pressure will be a minimum of 1,000 psig. The full facilities are also required so that the field will deliver 300,000 Mcf per day when 85 percent of the gas has been removed from the field.

United Natural anticipates that on the design day when 85 percent of the active gas has been withdrawn the stabilized well head pressure will be 1,501 psig, and the field will be delivering to a 1,200 psig transmission line pressure.

Wharton now has a capacity of 12,647,867 Mcf of active gas and an associated deliverability of 140,468 Mcf per day. The full development program calls for active gas of 24,000,000 Mcf and deliverability of not less than 300,000 Mcf per day until 85 percent of the active gas is withdrawn.[10]

Of the estimated 24,000,000 Mcf of active gas, 18,000,000 Mcf have been assigned to Transco and 6,000,000 Mcf to United Natural, with North Penn being entitled to no more than 1,000,000 Mcf of the 6,000,000 Mcf assigned to United Natural.

Of the estimated 300,000 Mcf per day of deliverability, United Natural is assigned 50,000 Mcf (which included North Penn's entitlement of not more than 10,000 Mcf) and Transco 250,000 Mcf. The 250,000 Mcf per day would provide Transco an increase in deliverability out of Wharton of 135,882 Mcf per day over Transco's present 114,118 Mcf per day.

As Transco recognizes, its market requirements in this case are 99,515 Mcf per day less than its ultimate storage deliverability. While it further recognizes that 99,515 Mcf per day of excess storage capacity is too much, it has no intention of actually providing this amount of excess capacity on its system. Its intent is to develop the Wharton Field only as needed.[11] In this connection it may also be pointed out that should the Con Ed substitute service be denied, the excess would be reduced from 99,515 Mcf per day to 44,515 Mcf per day even if the full development program were carried out in its entirety at one time.

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[9] It is estimated that the cost of the storage facilities for the full development program will be $5,111,190, and the cost of the compressor station will be $2,150,000.

[10] Wharton has thus far been developed as a storage field to operate between a cushion status of 12,650,000 Mcf at a calculated shut-in well head pressure of 1,300 psig, and a total status of 25,298,000 Mcf at a calculated shut-in pressure of 2,600 psig, providing 12,647,867 Mcf of active gas. United Natural estimates that the Wharton Field can be satisfactorily developed to a maximum pressure of 3,600 psig, and, when thus developed, it will operate between a cushion of 11,000,000 Mcf at a calculated shut-in well head pressure of 1,131 psig and a total status of 35,000,000 Mcf at 3,600 psig shut-in pressure, providing 24,000,000 Mcf of active gas and a designed minimum delivery of 300,000 Mcf of gas per day after 85 percent of such active gas has been withdrawn. In order to obtain design day deliveries of 300,000 Mcf during withdrawals, the compressor station will have a suction pressure of between 600 psig and 800 psig, and the operating line pressure at the well head will be between 620 psig and 827 psig. The compressor station discharge pressure will be 1,200 psig.

[11] It is Transco's desire to obtain authorization for the full development of the Wharton Field in order to be in a position to develop the field in an orderly manner as growth in storage markets require. The company has no intention of undertaking full development of its share of the field at one time unless its markets for the sale of storage service warrant that full development. In other words, Transco seeks to develop Wharton in a manner similar to that obtained by Atlantic Seaboard in 1964 in relation to its Glady Storage Field (31 FPC 1581).

United Natural formulated the plans for the full development program here involved and presented these plans through witness Montgomery, its Chief Engineer. This company's experience with gas storage fields goes back to 1920, and it actively developed storage areas thereafter. Rebuttal to United Natural's presentation was made by the Columbia Companies through witness Edwards, the Coordinator of Production and Storage for the Columbia System. Witness Edwards estimated deliverability of the Wharton Field to be 202,100 Mcf per day at design withdrawal conditions in comparison with witness Montgomery's 300,000 Mcf per day.

Witness Edwards assumed that the two Fork areas would not produce the deliverability forecast by witness Montgomery, the difference having to be made up by increased use of the Main Pool area with a resulting reduced pressure and deliverability on the design day[12]—a result which United Natural's planned selective operation (achieving required deliverability through use of fewer wells than those available) of the wells is planned to prevent. It is planned to operate the field so that each well will deliver gas against a constant line pressure.

Witness Edwards further assumed, contrary to the record, that the field would not be operated selectively but would be operated homogeneously. Wharton is not homogeneous in its permeability. Through the selective injection of gas into and withdrawal of gas from the different areas of permeability in the field, the pressures are expected to be controlled and in fact will vary.

On the basis of witness Edwards' testimony the Columbia Companies suggest that the joint application for the development of Wharton be severed from the consolidated proceeding; that the applicants be required to redesign the field consistent with its ability to perform; and that the matter be set for further hearing at a future date.[13] On the other hand, the joint applicants and the Commission Staff contend that the evidence supports a finding that the full development of Wharton will be achieved as planned and that the requested certificate should be issued.

As already indicated there are seven different areas of permeability in Wharton (the two Fork areas and the five in the Main Pool area). The sole basis for the full development program is that United Natural will operate the field in a manner which will take advantage of these differences in permeability. Under its plan, United Natural will selectively inject gas into and withdraw gas from the wells located in the different permeability areas. As an example, all the wells in the two Fork areas would be turned on at the beginning and will remain on throughout the withdrawal season. The wells in the Main Pool will be put on the line only when they are required. By way of further illustration, United Natural will regulate the pressures on each well along the fault line by selectively operating them.

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[12] Witness Edwards arrived at his conclusion by presuming that the Main Pool would have to deliver 20,155,200 Mcf by design day or 3,055,200 Mcf more than the 17,100,000 Mcf for which the Main Pool is designed. He agreed that the field would have a deliverability of 300,000 Mcf at design day under these conditions, using the same procedures which he used to arrive at the 202,100 Mcf.

[13] The interest of the Columbia Companies in the capability of the Wharton Field arises from their claim that the full development of that field will be inadequate to meet Transco's GSS capacity requirements, in particular as those requirements contemplate 49,000 Mcf of GSS service to Washington. They point out that a total deliverability from the field of 202,100 Mcf per day, as estimated by witness Edwards, would result in Transco's share being about 152,000 Mcf, which is barely adequate to meet the minimum required storage capacity of Wharton (150,485 Mcf per day) which Transco needs in order to serve Washington its 49,000 Mcf per day, assuming the 55,000 Mcf transfer from GSS service to CD service proposed for Con Ed is granted. It would be far short of the 205,485 Mcf of required deliverability in the event the proposed substitute service for Con Ed is denied.

Witness Edwards took issue with the withdrawals which witness Montgomery estimated would be forthcoming from the First and East Fork areas of the Wharton Field, he being of the opinion that it is impossible for these two areas to deliver the volumes contemplated in the full development design. Assigning what he considered to be a more appropriate withdrawal volume to the East and First Fork areas, and otherwise following United Natural's procedures for calculating deliverability, witness Edwards arrived at a deliverability out of the Wharton Field of 202,100 Mcf per day at design withdrawal conditions in comparison with witness Montgomery's 300,000 Mcf per day.

Witness Edwards further testified that the 202,100 Mcf of deliverability might actually never be achieved because "there is a likelihood that at the critical stage of withdrawal during the winter season salt water encroachment may occur on the southeast flank of the Wharton structure, resulting in the flooding out of several wells presently existing along such flank and the new wells to be drilled there. The wells on the southeast flank certainly have this threat hanging over them and represent over 95,000 Mcf of the 300,000 Mcf of design deliverability * * *."

Of the 20,400,000 Mcf to be withdrawn at design conditions, witness Montgomery ascribed 3,300,000 Mcf to be withdrawn from the two Fork areas, the remaining 17,100,000 Mcf coming from the Main Pool.[14] In this connection, the paucity of data relating to the two Fork areas and the dissatisfaction of the Commission Staff with the predicted performance of the East and First Fork areas are indicated in the following excerpt from their brief:

> * * * The deliverability of gas from the East Fork and First Fork area has not proven to be reliable. The 15 wells in these two areas of Wharton are in very tight sand—having poor permeability—which results in very low withdrawal rates. None of these wells * * * has ever been proven in a withdrawal cycle. The deliverability curves used to predict deliverability characteristics are based on estimates. There is evidence that these wells have not been stabilized. Native pressures exceeding 2,000 psig were recorded in East and First Fork areas, indicating poor permeability and relatively poor characteristics as an annual turnover storage facility (37/4972). Field pressures during the intermediate development program were substantially higher than anticipated (36/4873).

Concerning the deliverability curves for the wells in the two Fork areas, witness Montgomery acknowledged that (1) United Natural only had one data point in respect to these wells, and (2) since this was all that was available, United Natural was required to assume a slope for such wells based upon Main Pool data gathered from wells nearest to the Fork areas.

The maximum total daily deliverability out of the two Fork areas, based upon witness Montgomery's curves, is 19,200 Mcf; and on the design day, when 85 percent of the active gas has been withdrawn, the curves reflect 3,720 Mcf. Witness Edwards testified that the average of 19,200 Mcf[15] and 3,720 Mcf, or 11,460 Mcf per day, represents the theoretical maximum average daily deliverability which could conceivably be expected out of the East and First Fork areas. The witness thus pointed out that, under the contemplated withdrawal period of five months or less, 1,719,000 Mcf (11,460 Mcf times 150 days) represents the theoretical maximum withdrawal from such areas. Witness Montgomery testified that the 11,460 Mcf per day average does not represent the maximum quantity that the East and First Fork areas might deliver for the reason that such average did not take into account the selective withdrawal pattern which United Natural contemplates. Witness Edwards agreed that the selective withdrawal pattern "may tend to increase withdrawals" from the two Fork areas.

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[14] 85 percent of the active gas (24,000,000 Mcf) calculates to 20,400,000 Mcf, of which witness Montgomery assigned 3,300,000 Mcf as being withdrawn from the two Fork areas and the balance, or 17,100,000 Mcf, from the Main Pool.

[15] Witness Montgomery was of the opinion that the 19,200 Mcf maximum could not be withdrawn each day during the withdrawal period.

There is also disagreement between the two witnesses over the adequacy of the coning allowance used in United Natural's design, and witness Edwards questioned the prospects for increased deliverability resulting from hydraulic fracturing.[10] With respect to the latter, witness Montgomery testified that United Natural has been "very sucessful in the Main Pool in fracturing wells. We have increased their deliverability by approximately two and a half times. It may be we may want to do the same thing here in the First and East Fork. We don't have any experience behind us on how these wells will actually perform. The data we have is very limited. We will probably want experience before we go in and decide to hydro-frac."

Based on the experience with hydraulic fracturing in the Main Pool, counsel for United Natural assume that if the two Fork area wells are also stimulated by hydraulic fracturing the deliverability of these wells would be increased to 4,297,500 Mcf and that this fully supports witness Montgomery's estimate of 3,300,000 Mcf of seasonal withdrawals from the Fork areas.

When the wells in the Wharton Field originally produced gas, edge water encroached on the wells as they were depleted and temporarily reduced the size of the pool. However, as gas is injected and withdrawn into storage at high pressures, the temporary reduction enlarges back towards its original capacity. This has been the pattern of most Oriskany sand storage pools in Pennsylvania, and United Natural has always recognized that the original capacity wouldn't be there the first cycle or two; that it takes several cycles before the edge water is pushed back.

The Main Pool of the Wharton Field has already been developed and successfully operated as a storage field through the three phases heretofore approved by the Commission. The present proposal for developing the field fully is based on data derived, for the most part, from the development and actual operation of the Main Pool in which all the new wells are to be drilled. The performance of all the new wells can reasonably be estimated based on this actual performance. Thus there is every reason to believe that it can be operated at a capacity of 17,100,000 Mcf. Whether the wells in the East Fork and First Fork areas will perform satisfactorily remains to be demonstrated, but whatever doubts may have been created are insufficient to cause either a rejection of the application or a redesign of the field as suggested by counsel for the Columbia Companies. United Natural, with some 46 years of experience operating gas storage fields, can be expected to operate the field in a practical and prudent manner, utilizing a selective pattern of operation during the entire withdrawal season, hydraulic fracturing of wells if and when necessary, and controlling storage gathering line pressures to achieve the maximum possible deliverability which might approach the 300,000 Mcf per day claimed by the joint applicants. Moreover, the field can be economically developed on an incremental basis and present markets do not require 99,515 Mcf per day (44,515 Mcf per day if the Con Ed substitute service is denied) of the additional 135,882 Mcf per day of deliverability Transco hopes to obtain as a result of the full development program.

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[10] Hydraulic fracturing, or "facing," is a method of well stimulation by which fluid is pumped under high pressure into the well, down the casing, and against the sand face. As the pressure is increased, the formation cracks, creating a larger drainage system for the well. Sand is then pumped into the cracks to prop them open.

United Natural has fraced 28 or 29 Main Pool wells and one East Fork well.

### RECOMMENDED CONDITIONS

A. *Wharton Field*

The Examiner denies the suggestion of Staff Counsel that the authorization for the full development of the Wharton Field be conditioned to require "that Transco shall not transfer on its books any costs associated with unnecessary storage development to gas plant in service from construction work in progress until such development actually is required."[17]

Transco has stated its intent to develop the field only as needed. Moreover, the Commission has recognized the desirability of maintaining a reasonable amount of excess pipeline capacity.[18] There appears to be no valid reason for distinguishing between reasonable excess pipeline capacity and excess storage capacity—assuming excess storage capacity results from Transco's development efforts.

Furthermore, what would constitute "unnecessary storage development" is a matter of judgment depending upon such factors as the market situation, system flexibility requirements, the number of wells drilled, the amount of base gas to be injected, the lead time required to obtain capacity and inject gas and other practical factors. As counsel for Transco further point out, it is impossible to develop a storage field which would have capacity precisely equal to the market requirements at any given time, reference being made to the fact that at the outset of this case Transco had existing on its system some 14,000 Mcf per day of "excess" storage capacity which, by the terms of Staff counsel's proposed condition, would require that some portion of the storage facilities related thereto be removed from Transco's rate base.

Sufficient protection will be provided by requiring Transco to submit an annual report to the Commission setting forth the facts pertinent to the further development of Wharton.

B. *Main Line Facilities*

Staff counsel also recommend that, because of the pendency of Transco's Docket No. CP64-270 and the possibility that Transco may not be authorized to serve certain of the contested markets in that proceeding, that a condition be imposed in Docket No. CP65-181 to preclude permanent authorization to Transco for facilities which may not be required.[19]

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[17] In support of their recommended condition Staff counsel cite *Transcontinental Gas Pipe Line Corp.*, 30 FPC 38, 40; *Tennessee Gas Transmission Co.*, order issued July 26, 1965 in Docket No. CP65-352, 34 FPC 115. However, the facilities there (LNG storage facilities) were new facilities to be constructed all at one time, as contrasted with the underground storage here involved where development is to be completed in a field already in successful operation, as the market for storage service increases. In the Examiner's view, Transco should be treated no differently here than Atlantic Seaboard was treated in its Glady Storage Field case (31 FPC 1581) in which no condition such as now proposed by Staff counsel was imposed.

[18] See Notice of Proposed Statement of Policy dated November 2, 1965, Docket No. R-293, in which the Commission seeks to encourage "established pipeline companies subject to its jurisdiction to plan their future expansions so as to provide reserve capacity in the order of one year's growth."

[19] Southern Natural Gas Company's (Southern) brief suggests the denial of specific facilities on the assumption that Transco will be denied authority to render *all* of the services proposed in Docket No. CP64-270. Southern's interest in these proceedings results from the inter-relation of the application of Transco in Docket No. CP65-181, with, and the pendency of that application upon, Transco's application in Docket No. CP64-270. In the latter application, Transco proposed to serve markets of 81,935 Mcf in direct competition with services proposed by Southern in Docket No. CP64-314.

Transco recognizes that some modifications of its various pending expansion proposals will have to be made. At the time of the hearing the application in Docket No. CP65–181 was the latest expansion proposal of Transco on file. At the present time, however, Transco also has on file a subsequent expansion program in Docket No. CP66–233. Each of these expansion applications is built on top of the prior application and, while some of the facilities proposed in Docket No. CP64–270 will apparently not be required in that docket should the Commission deny certain markets to Transco therein, such facilities may be required to render the services in Docket No. CP65–181. Similarly, the result of a denial of certain services in Docket No. CP64–270 may eliminate the need for certain of the facilities proposed in Docket No. CP65–181 to serve the markets herein, but such facilities would apparently be required as a first step in Docket No. CP66–233.

Because of the past necessity for pyramiding of applications; the fact that the consolidated proceeding of which Docket No. CP64–270 is a part is now awaiting Commission decision on exceptions; and the fact that Transco's latest application in Docket No. CP66–233 is now pending, the Examiner adopts Transco's suggestion that authorization to Transco in this case be granted subject to the condition that Transco be required to amend its latest expansion application (Docket No. CP66–233) in order to eliminate therefrom any facilities which might require elimination should the Commission deny any of the markets in Docket No. CP64–270. In this way, Transco will be able to obtain a permanent certificate for all of the facilities proposed in Docket No. CP65–181, to the extent authorized by this decision, and will be able to avoid the amendment of three applications. This appears to be the most feasible course of action available to the Examiner.

## THE CON ED SERVICE ISSUE SEVERED BY THE COMMISSION

The record having been reopened for the taking of further evidence on the air pollution issue raised in connection with the proposed Con Ed sale, there are some factors the parties should consider in preparing and presenting their evidence. Accordingly, in lieu of a prehearing conference or other notice to the parties, and because the time is short, the Examiner takes this opportunity to make the observations set out below in an effort to have the further record made as complete as possible. The parties should take a close look at air pollution control alternatives in view of the Commission's conservation policy which, in the Examiner's view, is not out of date.[20]

Much is being heard, and rightly so, about the imperative need for the reduction and control of air pollution in heavily populated areas. We are now seeing the pendulum of public reaction swinging to an insistent demand that those in authority do whatever is necessary to alleviate air pollution conditions and to see to it that such conditions are hereafter controlled within proper limits. So far as electric generating stations are concerned, parts of the power industry have come under heavy fire for failing to respond adequately themselves to the public demands in this field.

Con Ed's failure in New York City brings this Commission, in this case, face to face with a major decision. It appears that the Commission must decide whether technology rather than more natural gas must be depended upon to cope with pollution caused by generating plants. Since larger populations than we have now will have to be protected in the future, will not the accelerated depletion of our natural gas reserves for the purpose of reducing air pollution create more problems than it will solve?

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[20] The observations made conform to the decision in *Scenic Hudson Preservation Conference* v. *Federal Power Commission*, 354 F. 2d 608, cert. den., 384 U.S. 941, holding (1) that the Commission must base its determinations upon a complete record, and (2) that it should make a thorough study of possible alternatives to assure that it will adequately protect the total public interest.

No one disputes the fact that natural gas is a nonreplenishable resource and that the necessity for conserving it is paramount. For this reason, the Commission has often declared the use of gas for boiler fuel by Con Ed and others as an "inferior" use. If conservation was a wise policy in the past, will it not be even more so in the future? If more natural gas is used under boilers to aid in licking the air pollution problem, and if as a result natural gas reserves are depleted, what means will later be used to lick the air pollution problem insofar as stack emissions are concerned? Would it be advances in technology? If necessity is still the mother of invention, would use of more natural gas now as boiler fuel unnecessarily delay the development of needed additional mechanical devices?

It seems to the Examiner that this case has to be viewed, as the Commission viewed Transco's prior X-20 case hereinafter discussed, from a broad, fundamental standpoint, involving as it does factors and trends contributing to the accelerated use of natural gas reserves and the distinct possibility of increased field prices. If the use of natural gas being proposed by Con Ed is granted, it goes without saying that the Commission can expect (in addition to the several applications now pending before it) a flood of requests for the similar use of natural gas in other areas. Perhaps even larger quantities will be sought for use in New York City. So that the difficulty with start-ups such as Con Ed's is that, like an iceberg, seven-eighths of its full size and impact are presently out of sight.

Since the Commission is the guardian of the total public interest, it must in every case consider all relevant factors and adjust local and private wants to the national public's needs. Knowing that the natural gas industry has and is experiencing phenomenal growth,[21] and that declines in natural gas reserves do not reverse themselves like a self-righting life boat, the Commission's best efforts must be devoted to keeping demands within supplies, for the industry's gas supply situation must not be permitted to prematurely deteriorate to the point where too many uses of gas will be chasing too few sources of supply.

A most important consideration for FPC and other agencies in the regulation of the industry is the fact that natural gas is capable of a myriad of necessary applications and supports the sixth largest of the nation's industries in terms of investment. This industry is a major force in the economy of the United States, supplying nearly one-third of the country's total energy requirements. Accordingly, it would seem that any proposed use of gas which is likely to bode harm to its over-all operations and the public it serves would have to be rejected. No one can afford to take chances that might cause the general public and pipelines and distributors to end up where they do not plan to be.

Those in authority must ask themselves whether the desired goal of alleviating air pollution can be achieved without the further use of natural gas.

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[21] Concerning the accelerated consumption of natural gas, the Commission's 1965 Annual Report, at page 107, points out that "Over the past 15 years natural gas consumption has recorded an average annual growth of 7½ percent as compared with an average annual growth of 3½ percent for all primary fuels."

In Transco's reply brief (pp. 14–15), reference is made to page 93 of "1965 Gas Facts," the latest statistical publication of the American Gas Association, where it is stated: "Gas utility and pipeline sales to ultimate consumers of 115.9 billion therms in 1964 evidenced the largest absolute gain in the recorded history of the industry, increasing by 8.2 billion therms over the prior year's level."

Every possibility of utilizing mechanical equipment and low sulfur-content fuel, other than natural gas, ought to be thoroughly explored. Research, of course, appears to be progressing. An example is the recently published report[23] that a chemical company will make the first major installation of equipment to control emission of sulfur dioxide from a power plant, this installation to be made at a Metropolitan Edison Company power plant in Pennsylvania, the chemical company having a more than normal interest therein because the equipment will also produce valuable sulphuric acid. According to this report, it is believed that an economically feasible method has been found "to remove 90 per cent of the sulfur dioxide in stack gases. The smoke from the power plant boilers will have 99.6 per cent of its particulate matter (fly ash and soot) removed * * *."

The Examiner requests that HEW and the Commission Staff, as well as other parties having knowledge of the facts, include in their evidence a showing of the technological progress that has been and is being made in the development of air pollution control equipment; the research being conducted; and the need for the use of more natural gas in power plants in New York City in the light of such progress and research.

In the opinion of the Examiner, this case ought not to be presented on the basis of having to choose between the conservation of natural gas, on the one hand, or the elimination of stack pollution, on the other. There is a compelling need for both. The situation has to be viewed in its larger perspective. If government agencies and the parties approach this problem from this constructive view, they should be able to find a solution that will make it unnecessary for those living in the future to suffer from a present day want of foresight in the use of natural gas.

Transco's proposed substitute service to Con Ed presents this question: Does the present or future public convenience and necessity require that Transco be permanently certificated to substitute 55,000 Mcf per day of firm CD-3 service for the same maximum daily quantity of GSS storage service, now being rendered on a winter basis, to enable Con Ed to burn an additional 20,075,000 Mcf of natural gas annually under its Ravenswood Plant boilers to generate electricity?

While the proposed replacement of storage service (delivered as needed during the relatively brief peak periods) with 55,000 Mcf of year-round firm CD-3 service would provide Con Ed with an additional 20,075,000 Mcf of natural gas annually, it would not change Con Ed's present peak day entitlement. On a peak day, Transco delivers to Con Ed 283,722 Mcf, consisting of 228,722 Mcf of CD-3 gas and up to 55,000 Mcf of storage gas.[24] Under the present proposal Transco would discontinue the storage service and increase its CD-3 deliveries by 55,000 Mcf per day, or from 228,722 to 283,722 Mcf. Thus Con Ed would still have 283,722 Mcf available on a peak day, but instead of 55,000 Mcf thereof being made available via storage, this volume would now be available as CD-3 gas.[24]

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[23] See New York Herald Tribune, April 12, 1966, page 1.

[24] Transco has been storing gas which Con Ed would have used as boiler fuel. That is to say, Transco has taken up to 4,550,000 Mcf of gas otherwise deliverable to Con Ed as part of its present permanent CD-3 daily entitlement of 228,722 Mcf, placed it in storage during the injection period, then delivered the same volume to Con Ed during the winter months at a rate not to exceed a maximum daily volume of 55,000 Mcf.

Con Ed's purchase of 228,722 Mcf of CD-3 gas entitles it to an annual volume of 83,478,000 Mcf which, under the present proposal, would be increased by 20,075,000 Mcf, or to an annual volume of 103,599,000 Mcf, for which Con Ed would pay $39,076,892, or an average of 37.7¢ per Mcf.

As indicated in footnote 23, Transco's injection of 4,550,000 Mcf of Con Ed's CD-3 gas into storage for later delivery to Con Ed during peak periods has prevented its use as boiler fuel. The Commission brought this result about by its patient efforts in directing Transco's energies into the development of storage facilities, a purpose with which the present proposal to supply boiler fuel gas to Con Ed would seem to be completely inconsistent. If the pendulum is now to start swinging the other way, would not that constitute a worrisome action and an unnecessary compromise with principle? Would such a compromise be the forerunner, as Staff counsel believes it would be, of further compromising if other Transco distributor-customers insist upon and are granted equal treatment through the substitution of firm pipeline service for storage service?

Con Ed proposes to burn the additional 20,075,000 Mcf at its Ravenswood electric generating plant, located in Long Island City, in place of more expensive fuel oil. Ravenswood is Con Ed's newest and most efficient generating station. Its stacks are 515 feet above marine and aviation datum with the high exit velocity of emissions of 80 miles per hour. The first of its three units was placed in operation in 1963 and the last in 1965. The 20,075,000 Mcf of additional gas now sought is earmarked for use by Units Nos. 1 and 2 (400 mw each). Unit No. 3, the world's largest—1,000 mw, is in the process of being equipped to burn coal, as well as oil, its initial coal burning operation being scheduled for early January 1967. None of these units has any air pollution control equipment, although it is proposed to install mechanical and electrostatic precipitator stack gas cleaners on Unit No. 3 for use when coal is burned.

In the consolidated proceeding which concluded on February 4, 1966, the attempt was made to make a positive showing of public need for the use of natural gas as boiler fuel at Ravenswood. The effort was made, as in Transco's prior X-20 case, to make out a special case through air pollution evidence and argument. While the Commission, in X-20, considered the contentions of Transco, Con Ed and the City of New York relating to the need for air pollution control as tending to support the grant of a certificate in that case, it concluded, as it explained in denying rehearing, that (21 FPC at p. 403)—

> Although air pollution exists in New York City, as it does in many metropolitan areas, the evidence falls short of establishing that burning the volumes of gas here in question in Consolidated Edison's boilers would remedy the air pollution in New York City generally in sufficient measure to offset the detriments of the X-20 service. * * *

The volume of boiler fuel gas sought for Ravenswood averages 55,000 Mcf per day, or 5,000 Mcf more than the 50,000 Mcf per day which Con Ed was unsuccessful in obtaining in the X-20 case.[25] The X-20 case involved a request for gas for use in the old Waterside plant located in crowded mid-town Manhattan. In sharp contrast, the new Ravenswood plant is located on Long Island.

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[24] In the circumstances of this case, the proposed sale of additional CD-3 gas to Con Ed would be a jurisdictional sale, notwithstanding the fact that the additional volume of 20,075,000 Mcf which Con Ed seeks to realize out of the substituted service would all be used as boiler fuel (*United States v. Public Utilities Commission of California*, 345 U.S. 295; *Central Illinois Public Service Co. v. Federal Power Commission*, 338 F. 2d 682, 686).

[25] The record in the X-20 case indicated Transco's "Intention to apply subsequently for authority to increase the 50,000 Mcf to 120,000 Mcf per day" (21 FPC at p. 402).

The objections that have been made by the Commission Staff and the Coal Intervenors to the proposal to provide Con Ed with an additional 20,075,000 Mcf for use as boiler fuel go outside the conventional requirements of present ability to serve. That is to say, the challenges go to policy considerations, as they did in X-20.[26]

The X-20 case (*Transcontinental Gas Pipe Line Corp., et al.*, 21 FPC 138, rehearing denied, 21 FPC 399 (1959), order set aside, *sub nom., Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 271 F. 2d 942, reversed 365 U.S. 1 (1961)) stands in the background of the instant proceeding.[27] In X-20 the Supreme Court upheld the Commission's refusal of a certificate to Transco for the transportation of gas bought by Con Ed in the field for use under its boilers in New York City. That was considered as a victory directed at assuring adequate and reasonably priced future gas supplies for higher priority uses. The Supreme Court held, *inter alia*, that "the 'end use' factor was properly of concern to the Commission."

The present request for an additional 20,075,000 Mcf of natural gas comes after the Commission's action causing Con Ed to curtail its boiler fuel use in favor of injecting gas into storage to meet peaking needs.

It is noteworthy that the New York Public Service Commission, an intervener in the X-20 case, did not support the position of Transco, Con Ed and the City of New York in that proceeding and did not seek review of the FPC's decision sustained by the Supreme Court. The New York Commission is not an intervener in the instant proceeding. Its present views may coincide with the conservation viewpoint expressed by its former Chairman Maltbie in the following excerpt from a 1936 boiler fuel case (Re *Cabot Gas Corporation*, 16 PUR (NS) 443, 445):[28]

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[26] Despite the Supreme Court's affirmance of the Commission's X-20 decision, the Examiner has noted the fact that cross-examination in the instant proceeding developed that Con Ed's Waterside power plant boilers Nos. 71 and 72, under which the X-20 gas was to be burned, are now being fired by natural gas year-round (Tr. 4850). There is no explanation in either the evidence or the briefs as to how Con Ed, without the X-20 arrangement, manages to burn gas year-round under boilers Nos. 71 and 72. Accordingly, the Examiner requests that the explanation be supplied by Con Ed's counsel at the reopened hearing.

[27] The X-20 case involved an arrangement whereby natural gas was to be purchased by Con Ed directly from producers in the field in Texas and transported to New York by Transco for Con Ed's use as boiler fuel in its Waterside plant located in mid-town Manhattan. Transco was also to provide Con Ed with a peaking service from Transco's own gas supply.

The Commission's denial of a certificate in X-20 rested upon a combination of three determinations: (1) the inferior "end use" of gas as boiler fuel; (2) the possibility that such purchases in the field might cause a general rise in field prices; and (3) the likely pre-emption of gas reserves and pipeline capacity by industrial customers to the detriment of domestic consumers competing for gas supply. As the Supreme Court held, the Commission did not exceed its authority or abuse its discretion in denying the certificate on these considerations.

The Supreme Court also sustained the Commission's forecast of the future as to the probability of increased field prices in the event the X-20 arrangement were approved (365 U.S. at pp. 28-30). In this connection the Commission, in the regulation of the natural gas industry, often finds it necessary to forecast the future. In peering into the future in formulating its policies, the Commission must rely upon cumulative experience even though the best conclusions that experienced judgment may support are sometimes fraught with uncertainty, this being particularly true in attempting to forecast future gas supply.

> There can be but one opinion among those who believe in conservation of natural resources. They should be developed not to benefit a few individuals but in the interest of public welfare present and future. Our natural gas resources ought to be conserved and there is probably no field where the Federal government acting in the interests of the entire country and to protect the welfare of the future could accomplish more than in the natural gas industry.

While no one is suggesting that the nation is running out of gas,[29] all are aware that the entire natural gas industry rests upon a foundation of production of available natural gas reserves. The industry is in fact no stronger than the reserves available to it. Unless additions to proved natural gas reserves increase as rapidly as demand, the industry's ability to provide service will deteriorate. This means that enough new gas must be found each year not only to replace the year's production but to offset the increase in demand as well.

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[28] It would seem to the Examiner that the greater the use of natural gas the greater the need for placing increasing emphasis upon conservation. However, should the Commission no longer regard boiler fuel use as wasteful of gas committed to its jurisdiction, State Commissions could hardly be expected to continue to urge the conservation of gas supply. That would be a disservice to boiler fuel users in their jurisdictions. So long as the gas supply lasts, State Commissions would undoubtedly prefer that their users get all the gas they want while the getting is good, irrespective of use, so that they would have the profits and advantages of gas users in other States. That is to say, State Commissions would undoubtedly react, as did Chairman Maltbie of the New York Commission in the *Cabot Gas Corporation* case, *supra.* Notwithstanding the fact that Chairman Maltbie was "heartily in favor of the conservation of natural gas", he had to answer this question: In "this specific case, will the granting or the denial of the petition work to the benefit of the people of New York?" In answering this question he pointed out that "it is possible for Pennsylvania companies to take all of the gas from this field unless the New York companies remove the gas before the field is exhausted"; that "There are many other companies tapping the supply and we have no means of determining where, when, or to whom the gas will be sold. If restriction is imposed on the use of it in New York * * * the gas will go to other areas * * *." Accordingly, finding that the people of New York would not be benefited by the denial of the application, and being unable to see how denial would conserve gas, he supported the use of natural gas as boiler fuel in that case. As Chairman Maltbie concluded, "Any attempted protection of any industry or of any area will either be ineffectual or merely transfer the effect elsewhere until a broad scheme of conservation is adopted."

[29] The Commission has pointed out in its Permian Basin rate Opinion No. 468, issued August 5, 1965, 34 FPC 159, that "additions to proved reserves of natural gas in the United States have exceeded production each year" (p. 193).

The proved reserve (the measurements of which are open to some doubts) is regarded as a working inventory available for production as needed. It does not tell the whole story, however, for there is an ultimate reserve which might be discovered. What the ultimate reserve may be in terms of consumption has to be estimated. Such estimates, because of the formidable difficulties involved, are very speculative. It is this uncertainty as to supply that compels the Commission to tread cautiously when new assaults are proposed to be made on gas supply.

As consumption of natural gas grows, more of the "potential supply" must be discovered, developed and added to the proved reserves to meet constantly increasing demands. The physical exhaustibility of producing properties, of course, makes it necessary for producers to carry on constant programs of exploration and development to replace reserves consumed if they are to stay in business. Their search for new reserves is carried on wherever they think geological conditions warrant. In this connection, while there are now some thirty States with natural gas reserves of varying quantities, the great bulk of the nation's proven reserves lies in the Southwestern States and offshore from which most of the production flows.

The diversion of gas produced in a major area for boiler fuel purposes might disrupt general consumer supplies.

Any evaluation of available gas supplies must take into account increasing discoveries in Canada and Mexico. Gas produced in those two countries is being made available to meet the needs of both the United States and the foreign producing country. As to gas produced outside the United States, it would be reasonable to assume that the needs of the producing country would take priority over United States needs.

The experience of the industry has been that only one wildcat well in every nine drilled has been completed as a producing well. The other eight have been abandoned as dry holes. What the future success ratio will be, and what will be the full result of deeper drilling, remains to be demonstrated.

Mounting effort is being made by the Commission, the industry, the Department of the Interior and others to improve their knowledge as to where they are in relation to gas requirements and supply, and where they are tending, so that they may better know what to do and how to do it. They have the responsibility to keep their approach fresh, it being unarguable, as the Supreme Court has said, that "The ultimate exhaustion of the supply is inevitable in the case of all natural gas companies" (*Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 606).

Should the Commission undertake to allocate gas supply to help combat air pollution, it may not want to do so without a thorough investigation in which it has the complete and voluntary cooperation of the industry, or perhaps it would at least want to await the outcome of other reliable investigations to determine the availability of gas to aid in combating air pollution.

Four of the five members of FPC have endorsed the concept of a comprehensive National survey of our natural gas reserves in relation to our future needs—similar to FPC's recently completed National Power Survey—to improve the Commission's expertise and to provide for closer understanding and cooperation with the industry and the public. As Vice Chairman Bagge has put it, "it is essential that we inventory * * * resources, re-examine our national strategy and evaluate the implications of * * * growth in depth." Regulation, he said, "should weigh long-term goals against short-term advantages." In a more recent address the Vice Chairman suggested that the Commission must "Increase its recognition that the responsibility of the Commission extends to adequacy of reserves" and "Make an effort to analyze comprehensively such reserves."

Moreover, it is common knowledge that the natural gas industry itself has a committee which hopes to complete this year the most comprehensive study ever attempted of the future natural gas requirements and supply. The further hope of this committee is that its study will be acceptable to both the Commission and the industry.

The Secretary of the Interior has created a "high level group within the Department of the Interior to assess the prospects for continued adequate supplies of domestic petroleum energy to the Nation between now and 1980, and to identify actions which will be conducive to this end."[80]

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[80] Address by the Secretary of the Interior before the National Petroleum Council, Washington, D.C., March 1, 1966. The Secretary stated in part:

For gas, under the same basic assumptions and choosing to maintain a reserve-to-production ratio of 18:1, we shall need to add 450 trillion cubic feet to our proved reserves. This is an average of 30 trillion cubic feet a year. At no time in its history has the petroleum industry ever added as much as 25 trillion cubic feet to its reserves of gas in any one year. The average since 1955 has been 20 trillion. The meaning of these figures becomes ever more clear if we compare our recent past experience with a comparable period of time in the immediate future.

Please understand me here. This is a hypothesis, not a forecast. Obviously, correction would begin to be applied long before matters got as serious as the figures I have just cited would indicate. My point is simply that there is enough evidence at hand now to suggest strongly the need for us to consider, more carefully than we have

Since natural gas is a nonreplenishable resource, it seems clear that the channeling of massive quantities of this wasting resource under boilers will inevitably result in scarcity to other consumers and a general price increase brought about by continuing inflationary pressures and the increasing cost of searching for, finding, producing, gathering, processing and transporting gas.

The Commission Staff and the Coal Intervenors have contended that the proposed use of the additional 20,075,000 Mcf at the Ravenswood generating station would not alleviate air pollution in New York City to any meaningful degree. The answering brief filed by the City of New York (which offered the only air pollution witness) recites that implicit in the contention of the Staff and the Coal Intervenors—

> * * * is the concession that some reduction can be accomplished. That is all the City ever hoped to attain by its intervention in this proceeding. * * *
>
> It is probably true that older plants of Con Edison contribute a higher average pollution than Ravenswood. It would be to the City's interest, consequently, if the gas were to be used at the time and place it would do the most good. Quite obviously, the City has no authority to direct its use at any location, except as it will continue to enforce its Air Pollution Control Code. * * * Con Edison's plan to use the gas at Ravenswood is not a firm commitment. It was expressed as a present intention * * * subject to change according to operating exigencies * * *.

Counsel for HEW, in their proposed brief filed with their petition to intervene, state that—

> * * * recognizing the value and relative scarcity of natural gas, it is our view that the allocation of natural gas for the purpose of alleviating air pollution should, in any given situation, require a showing that the proposed use would in fact make a significant contribution to the control of air pollution. * * * [W]e are not persuaded * * * that [the use of natural gas at Ravenswood] would constitute the most effective use for air pollution control purposes.

Consequently, counsel for HEW have suggested that—

> * * * insofar as the granting of this application turns on the air pollution problem, the proposed additional supply of gas under this application be approved only if suitable assurances are obtained that it will

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so far done, the question of how our enormous future demands for petroleum energy will be supplied, and what corrective actions, if any, are indicated.

* * * * * * *

It therefore seems to me that any inquiry that addresses itself to the matter of our future supplies of oil and gas must begin with an examination of this broad area of public responsibility.

With the thought that it is better to light one candle than to go on cursing the darkness, I have directed a high level group * * * to assess the prospects * * *.

* * * * * * *

Should the Group find that there is cause for concern * * * it will be asked to look at possible remedies.

* * * * * * *

* * * You will recognize that for every question I have asked there are a hundred more that need to be answered to give us the kind of understanding we need of this vital subject. As I said earlier we will never get all the answers; we will never know all the details because we are dealing with data that is knowable only to a degree extended into a future which is hardly knowable at all. But despite these limitations, we can certainly better the state of our existing knowledge and understanding of our problems, and our policy decisions will be the better for it.

> be used by Con Ed in the most productive way to alleviate the air pollution problem in New York City.

This HEW suggestion is opposed by Con Ed because, in its view, there are—

> * * * compelling reasons why it would be impractical to attempt to prescribe in a certificate proceeding an inflexible pattern of future use of natural gas by a customer of the applicant pipeline. * * *
>
> * * * * * *
>
> Despite the importance of air pollution, the Company must remain free to meet its primary obligation of serving its customers in the most reliable manner.
>
> * * * [W]e respectfully request that the Examiner recommend no "suitable assurances" from Edison, such as are recommended by HEW, that might limit the Company's managerial discretion in the use of its natural gas supply.

HEW's evidence should specify the Con Ed plants in which it believes the use of natural gas would constitute the most effective use for air pollution control purposes. It should also indicate its reasons, if any, for believing that the installation of control equipment at those plants could not accomplish the desired end. In this connection, published newspaper reports indicate that the new anti-pollution bill passed by the New York City Council requires Con Ed to begin installation of control equipment of 99 percent efficiency in all its coal-burning plants and to complete the job in three years.

A factor which may be involved in Transco's proposed substitute service to Con Ed is whether considerations of conservation should be sacrified to too feverish a schedule to abate air pollution caused by the operation of Con Ed's power plants in New York City, a City which appears to be in the unfortunate position of being burdened not only with its own pollution but with a substantial portion of that originating in nearby cities and areas as well.

## FINDINGS AND CONCLUSIONS

(1) Transco, Atlantic Seaboard, United Fuel, Columbia Gulf, United Natural and North Penn are "natural-gas companies" within the meaning of the Act.

(2) The facilities which Transco proposes to construct and operate in its application at Docket No. CP65–181, which Transco, United Natural and North Penn propose to construct and operate in their joint application at Docket No. CP65–182, and which Atlantic Seaboard, United Fuel and Columbia Gulf propose to construct and operate in their applications at Docket Nos. CP65–122, CP65–198 and CP65–102, respectively, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation of such facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Act.

(3) The Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.

(4) The facilities proposed to be constructed and operated by the Applicants, which are fully described in their applications, as amended and supplemented, are required by public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The market requirements submitted in support of the various applications are reasonable.

(6) The additional capacity and deliverability to become available upon full development of the Wharton Storage Field cannot be definitely determined on the basis of the present record.

(7) It is appropriate and in the public interest that Transco be required to submit annual reports relating to the further development and operation of the Wharton Storage Field as hereinafter ordered in paragraph (C).

(8) The facilities required by Transco to furnish the proposed substitute service to Con Ed are a part of the facilities Transco has constructed pursuant to temporary certificates issued by the Commission. It is reasonable to expect that a permanent certificate for those installed facilities will be issued in the normal course of events irrespective of whether Transco is authorized to provide the proposed substitute service to Con Ed.

(9) All of the facilities for which Transco has been granted temporary authorization to construct and operate are needed by Transco to serve loads other than Washington and Commonwealth.

(10) All of the facilities proposed to be constructed and operated by Atlantic Seaboard, United Fuel and Columbia Gulf in their applications at Docket Nos. CP65–122, CP65–198 and CP65–102, respectively, for which they have received temporary authorization, are needed by these Applicants irrespective of the outcome of the competitive service proposed to be rendered to Washington and Commonwealth.

(11) It is appropriate that Transco be required to amend its certificate application in Docket No. CP66–233 to the extent necessary to eliminate therefrom all facilities which might require elimination should the Commission deny any of the markets in Transco's Docket No. CP64–270.

(12) The public convenience and necessity require that the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's Regulations under the Act should attach to the certificates issued to the Applicants and to the exercise of the rights granted thereunder.

(13) The certificates issued to Columbia Gulf, Atlantic Seaboard and United Fuel should be specifically conditioned upon the following terms:

(a) Columbia Gulf shall not transport more than 1,102,500 Mcf (at 14.73 psia) for United Fuel on any day.

(b) Deliveries by Atlantic Seaboard to its jurisdictional customers shall be limited to the following maximum daily quantities:

| *Customer* | *Maximum daily delivery (Mcfd at 14.73 psia)* |
|---|---|
| Baltimore Gas and Electric Company | 272,000 |
| Blue Ridge Gas Company | 2,800 |
| City of Charlottesville, Va. | 12,100 |
| Commonwealth Natural Gas Corporation | 171,800 |
| Cumberland and Allegheny Gas Company | 21,000 |
| Lynchburg Gas Company | 7,000 |
| The Manufacturers Light and Heat Company | 54,000 |
| Roanoke Gas Company | 19,000 |
| Virginia Gas Distribution Corporation | 64,000 |
| Washington Gas Light Company | 493,500 |

(c) Deliveries by United Fuel to its jurisdictional customers shall be limited to the following maximum daily quantities:

| *Customer* | *Maximum daily delivery (Mcfd at 14.73 psia)* |
|---|---|
| Atlantic Seaboard Corporation | 716,570 |
| Bluefield Gas Company | 5,000 |
| Columbia Gas of Kentucky, Inc | 45,000 |
| Consumers Gas Utility Company | 1,119 |
| Gas Transport, Inc | 6,500 |
| Kentucky Gas Transmission Corporation | 606,200 |
| Luther Lusher | 30 |
| The Manufacturers Light and Heat Company | 335,000 |
| The Ohio Fuel Gas Company | 510,000 |
| The Ohio Valley Gas Company | 43,500 |
| Union Oil and Gas, Inc | 600 |
| Zebulon Gas Association, Inc | 40 |

(14) The facilities proposed to be abandoned by United Fuel, as described in its application, are used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the abandonment thereof by United Fuel is subject to the requirements of subsection (b) of Section 7 of the Act.

(15) Such abandonment by United Fuel is permitted by the public convenience and necessity, and an order authorizing and approving the same should be issued as hereinafter ordered.

(16) It is appropriate that the competitive proposals of Transco and Atlantic Seaboard to serve certain of the natural gas requirements of Washington and Commonwealth be considered by the Examiner in a separate decision, and that only one set of exceptions be filed to the two decisions as hereinafter provided in paragraph (H).

## ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Transco in Docket No. CP65-181, to Transco, United Natural and North Penn in Docket No. CP65-182, and to Atlantic Seaboard, United Fuel and Columbia Gulf in Docket Nos. CP65-122, CP65-198 and CP65-102, respectively, authorizing the construction and operation of facilities, transportation and sale of natural gas in interstate commerce as more fully described in their applications, as amended and supplemented, in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The authorization granted in paragraph (A) above does not include permanent authorization to Transco to provide (1) Con Ed with substitute service, or (2) to provide service to Washington and Commonwealth, as contemplated in Transco's application in Docket No. CP65-181, nor does it include permanent authorization for Atlantic Seaboard to provide service to Washington and Commonwealth on a permanent basis as proposed in Docket No. CP65-122. The permanent authorization granted covers (1) all facilities which the Applicants have constructed and operated, or are in the process of constructing and operating, pursuant to temporary certificates heretofore issued by the Commission, such facilities being needed by the Applicants irrespective of the outcome of the competitive proposals of Transco and Atlantic Seaboard to serve Washington and Commonwealth; and (2) those facilities proposed in the joint application in Docket No. CP65-182.

(C) Transco shall submit to the Commission an annual report in a form satisfactory to the Commission showing pertinent injection, withdrawal and operating data, as well as additional cost incurred in the further development of the Wharton Storage Field, until either the full development program has been achieved or until it is determined that the maximum possible development has been reached.

(D) Permission and approval of the abandonment by United Fuel of the facilities described in its application in Docket No. CP65-198 be and the same are hereby granted.

(E) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon compliance by the Applicants with all applicable Commission Regulations under the Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(F) The certificates issued to Columbia Gulf, Atlantic Seaboard and United Fuel are conditioned upon the terms set forth in paragraph (13) above.

(G) The certificates issued in paragraph (A) above shall be void and without force and effect unless accepted in writing by the Applicants within thirty (30) days from the date this order becomes the final act of the Commission.

(H) For the purpose of filing exceptions to the Examiner's decision herein, as well as the Examiner's decision on the competitive issue to be considered in a separate subsequent decision, the time for filing such exceptions will begin to run from the date of issuance of the Examiner's subsequent decision disposing of the competitive issue.

(I) Within twenty (20) days after the Commission issues its decision disposing of the consolidated proceeding in which Transco's Docket No. CP64-270 is involved, Transco shall file an amendment to its latest certificate application filed at Docket No. CP65-233 to eliminate therefrom all facilities requiring elimination as a result of Commission denial of service to markets proposed in Docket No. CP64-270.

FRANCIS L. HALL,
*Presiding Examiner.*

### APPENDIX A.—DOCKET NO. CP65-102, ET AL.

The pipeline and storage service proposed to be rendered by Transco is as follows:

| Customer | Rate schedule | Mcf per day at 14.7 psia |
|---|---|---|
| Consolidated Edison Company of New York, Inc | CD-3 | 55,000 |
| Delaware Power & Light Company | CD-3 | 2,000 |
| Eastern Shore Natural Gas Company | CD-3 | 815 |
| Elizabethtown Consolidated Gas Company | CD-3 | 2,000 |
| The Manufacturers Light and Heat Company (Muncy) | CD-3 | 3,200 |
| Palmerton Gas Company | CD-3 | 220 |
| Pennsylvania Gas and Water Company | CD-3 | 1,133 |
| Philadelphia Electric Company | CD-3 | 5,000 |
| South Jersey Gas Company | CD-3 | 2,500 |
| United Gas Improvement Company, The Philadelphia Gas Works Division | CD-3 | 10,000 |
| Carolina Natural Gas Corporation | CD-2 | 1,000 |
| Carolina Pipeline Company | CD-2 | 5,000 |
| Commonwealth Natural Gas Corporation | CD-2 | 27,700 |
| Fort Hill Natural Gas Authority | CD-2 | 400 |
| North Carolina Natural Gas Corporation | CD-2 | 3,000 |

APPENDIX A.—DOCKET NO. CP65–102, ET AL.—continued

| Customer | Rate schedule | Mcf per day at 14.7 psia |
|---|---|---|
| Piedmont Natural Gas Company, Inc | CD-2 | 13,000 |
| Public Service Company of North Carolina, Inc | CD-2 | 9,155 |
| Shelby, North Carolina, City of | CD-2 | 600 |
| Washington Gas Light Company | CD-2 | 55,000 |
| Atlanta Gas Light Company | CD-1 | 5,000 |
| United Cities Gas Company, Georgia Division | CD-1 | 100 |
| The Manufacturers Light and Heat Company (New Village) | G-3 | 1,100 |
| Hughesville Division of Jersey Shore Gas and Heating Company | G-3 | 43 |
| Blacksburg, South Carolina, City of | G-2 | 160 |
| Kings Mountain, North Carolina, City of | G-2 | 50 |
| United Cities Gas Company, North Carolina Division | G-2 | 100 |
| Buford, Georgia, City of | G-1 | 100 |
| Clanton, Alabama, City of | G-1 | 200 |
| Covington, Georgia, City of | G-1 | 200 |
| Elberton, Georgia, City of | G-1 | 200 |
| Monroe, Georgia, City of | G-1 | 200 |
| Roanoke, Alabama, City of | G-1 | 100 |
| Social Circle, Georgia, City of | G-1 | 60 |
| United Gas Improvement Company, The (Hazleton District) | OG-3 | 300 |
| Bessemer City, North Carolina, City of | OG-2 | 299 |
| Union, South Carolina, City of | OG-2 | 200 |
| United Cities Gas Company, South Carolina Division | OG-2 | 300 |
| Butler, Alabama, City of | OG-1 | 75 |
| Hartwell, Georgia, City of | OG-1 | 100 |
| Total Proposed Additional Pipeline Service | --------- | 205,610 |
| Atlanta Gas Light Company | GSS | 9,000 |
| Commonwealth Natural Gas Corporation | GSS | 2,000 |
| Delaware Power & Light Company | GSS | 3,000 |
| Greenwood, South Carolina, City of | GSS | 200 |
| Long Island Lighting Company | GSS | 35,000 |
| Pennsylvania Gas and Water Company | GSS | 5,817 |
| South Jersey Gas Company | GSS | 2,000 |
| Washington Gas Light Company | GSS | 49,000 |
| Total Proposed Additional Storage Service | --------- | 106,017 |

In addition, Transco proposes that the existing allocation of the City of Laurens, South Carolina, under Transco's Rate Schedule CD–2, be reduced from 8,500 Mcf per day to 6,700 Mcf per day and, in connection with the proposed allocation of 55,000 Mcf per day of additional service to Con Ed, as shown in the foregoing table, Transco proposes that the existing allocation of 55,000 Mcf per day of GSS service to that customer be reduced to zero.

Transco seeks permanent authorization to construct and operate:

(a) the following facilities on its southeast Louisiana gathering system: 3.54 miles of 6-inch pipeline loop; 11.30 miles of 10-inch pipeline extension; 0.38 miles of 12-inch pipeline extension; 11.09 miles of 20-inch pipeline loop; 22.10 miles of 30-inch pipeline loop; 2,500 additional horsepower compression at Station No. 63, St. James Parish, Louisiana; and two gathering stations to be located in Terrebonne Parish, Louisiana;

(b) the following facilities on its mainline transmission system to be located in Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Pennsylvania, and New Jersey: 7.0 miles of 12-inch pipeline extension; 211.23 miles of 36-inch pipeline loop; 37.50 miles of 42-inch pipeline loop; 46,400 additional horsepower compression at Station Nos. 70, 80, 90, 100, 120, 130, 167, and 170 in Walthall County, Mississippi, Jones County, Mississippi, Marengo County, Alabama, Chilton County, Alabama, Henry County, Georgia, Madison County, Georgia, Pittsylvania County, Virginia, and Appomattox

County, Virginia; and 5 sales meter stations to be located in Forsyth County, North Carolina, Louisa County, Virginia, Prince William County, Virginia, Fairfax County, Virginia, and Bucks County, Pennsylvania; and

(c) the following facilities on its Leidy line: 74.81 miles of 24-inch pipeline loop and 4000 additional horsepower compression at Station Nos. 505 and 520, Somerset County, New Jersey, and Lycoming County, Pennsylvania, respectively.

Most of the service and facilities hereinabove described, other than the service and some of the facilities required to serve Washington and Commonwealth, appear to have been authorized by temporary certificates issued by the Commission on June 25, 1965, October 29, 1965, and June 1, 1966. The granting of the temporary authorizations was without prejudice to the Commission's final determination in the competitive proceeding or any other pending proceeding.

## APPENDIX B, DOCKET NO. CP65-102, ET AL.

### Facilities and Services Proposed in Columbia Companies' Applications

*Columbia Gulf, Docket No. CP65-102*

Columbia Gulf's original application sought authorization to construct and operate:

(a) Eleven mainline loops consisting of approximately 143.6 miles of 30-inch pipeline, and

(b) Approximately 17.4 miles of 30-inch pipeline loop on its East Lateral in St. Mary Parish, Louisiana.

These facilities were proposed to be used to help meet estimated requirements of United Fuel for the twelve-month period beginning November 1, 1965. Columbia Gulf is the transporter for United Fuel of gas United Fuel purchases in Louisiana. The Columbia Gulf system extends from southern Louisiana, through Mississippi, Tennessee and Kentucky.

The Commission's temporary certificate issued June 17, 1965, as amended on March 29, 1966, authorized Columbia Gulf to transport up to 1,155,000 Mcf per day (14.73 psia) of natural gas for United Fuel, and to construct and operate the facilities above described. Another temporary certificate, applied for by Columbia Gulf, amended the original application to reflect the installation and operation of X-65 line pipe in substitution for X-60 pipe originally proposed.

*United Fuel, Docket No. CP65-198*

United Fuel seeks authorization under Section 7(c) of the Act for:

(a) The construction and operation of approximately 22.1 miles of 24-inch loop pipeline extending from a point approximately 7.8 miles north of Cobb Compressor Station, Kanawha County, West Virginia, to its existing 24-inch loop pipeline south of Glenville Compressor Station, Gilmer County, West Virginia.

(b) The construction and operation of a new 6,000 horsepower compressor station located near its existing Cobb Compressor Station.

(c) The construction and operation of approximately 0.5 mile of 20-inch pipeline to connect the new compressor station with its existing transmission facilities, and

(d) To operate approximately 7.5 miles of existing 20-inch pipeline extending northward from a point approximately 0.4 mile north of Cobb Compressor Station as part of its high-pressure system.

Concurrently, United Fuel seeks, under Section 7(b) of the Act, permission and approval to abandon:

(a) Approximately 33.2 miles of 20-inch low pressure transmission pipeline extending toward Glenville Compressor Station from a point approximately 7.9 miles north of Cobb Compressor Station.

(b) Two 1350 horsepower low-pressure compressor units at Glenville Compressor Station, and

(c) Approximately 0.4 mile of 12-inch and 20-inch low-pressure pipeline extending northward from Cobb Compressor Station.

The new facilities are estimated to cost $4,709,100 and are to be used to supply increased requirements of United Fuel's existing wholesale and retail customers and storage operations, as well as to modernize a portion of its system. By its letter-order of June 17, 1965, the Commission granted United Fuel temporary authority to construct and operate the proposed facilities and to make sales and deliveries on a maximum day basis as follows:

Maximum Daily Deliveries under Rate Schedules providing firm service to jurisdictional customers Docket No. CP65–198, as amended

| *Jurisdictional customers* | *Maximum daily delivery Mcf/day (14.73 psia)* |
|---|---|
| Atlantic Seaboard Corporation | 716, 570 |
| Bluefield Gas Company | 5, 000 |
| Columbia Gas of Kentucky, Inc | 45, 000 |
| Consumers Gas Utility Company | 1, 119 |
| Gas Transport, Inc | 6, 500 |
| Kentucky Gas Transmission Corporation | 606, 200 |
| Luther Lusher | 30 |
| The Manufacturers Light and Heat Company | 335, 000 |
| The Ohio Fuel Gas Company | 510, 000 |
| The Ohio Valley Gas Company | 45, 500 |
| Union Oil and Gas, Inc | 600 |
| Zebulon Gas Association, Inc | 40 |

*Atlantic Seaboard, Docket No. CP65–122*

Atlantic Seaboard seeks authorization to construct and operate the following facilities estimated to cost $4,189,000:

(a) Approximately 10 miles of 36-inch pipeline, partially looping its existing facilities between Seneca Compressor Station, Pendleton County, West Virginia, and Lost River Compressor Station, Hardy County, West Virginia, and

(b) Approximately 15.9 miles of 26-inch pipeline replacing 16.1 miles of its existing 20-inch pipeline between Owings Mills and Manor Road, Baltimore County, Maryland.

The facilities are proposed to be used to provide sufficient transmission capacity to meet increased market requirements of Atlantic Seaboard's existing customers. The Commission's letter-order of June 17, 1965 granted Atlantic Seaboard temporary authority to construct and operate the facilities as proposed in its application, but the rendition of service to its jurisdictional customers was to be within the following specified limits:

| *Jurisdictional customers* | *Maximum daily delivery Mcf/day (14.73 psia)* |
|---|---|
| Baltimore Gas and Electric Company | 272, 000 |
| Blue Ridge Gas Company | 2, 800 |
| City of Charlottesville, Va | 12, 100 |
| Commonwealth Natural Gas Corporation | 171, 800 |
| Cumberland and Allegheny Gas Company | 21, 000 |
| Lynchburg Gas Company | 7, 000 |
| The Manufacturers Light and Heat Company | 54, 000 |
| Roanoke Gas Company | 19, 000 |
| Virginia Gas Distribution Corporation | 64, 000 |
| Washington Gas Light Company | 493, 500 |

While the temporary certificate issued June 17, 1965, did not authorize Atlantic Seaboard to render the competitive service to Washington and Commonwealth, a subsequent letter-order of September 24, 1965, did permit Atlantic Seaboard to render service to Washington and Commonwealth, it being specifically provided therein that the—

> * * * issuance of this temporary certificate is without prejudice to the determination of any of the issues involved in Transcontinental Gas Pipe Line Corporation's application in Docket No. CP65-181 and is not to be used in any manner as support for Atlantic Seaboard Corporation's competing application in Docket No. CP65-122.

## INITIAL DECISION

### OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1966)

HALL, *Presiding Examiner:* The issue for decision here is whether, in the circumstances of this case, the present or future public convenience and necessity requires that Transcontinental Gas Pipe Line Corporation (Transco) be certificated to become a second pipeline source of supply for Washington Gas Light Company (Washington) and Commonwealth Natural Gas Corporation (Commonwealth),[1] or whether these two companies should continue to be served exclusively by Atlantic Seaboard Corporation (Atlantic Seaboard), a pipeline affiliate of The Columbia Gas System, Inc.[2]

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[1] The proposed services by Transco to Washington and by Transco to Commonwealth are not interdependent. Each stands on its own merits.

[2] In Docket Nos. CP65-122 and CP65-181, respectively, Atlantic Seaboard and Transco filed applications pursuant to Section 7(c) of the Natural Gas Act (Act) for certificates authorizing enlargement of the capacities of their respective pipeline systems to meet increased natural gas needs. These two expansion programs are partially competitive in that both propose to provide certain of the requirements of Washington and Commonwealth. Because of this area of mutual exclusiveness as between the Atlantic Seaboard and Transco applications, the Supreme Court's ruling in *Ashbacker Radio Corp. v. Federal Communications Commission,* 326 U.S. 327 (1945), required the comparative hearing ordered by the Commission.

This opinion is limited to the competitive issue, all other aspects of the two applications, as well as the three additional certificate applications with which they were consolidated for joint processing, being the subject of the Examiner's decision issued June 13, 1966.

Disposition of this case is made in the light of the historical development of the Atlantic Seaboard and Transco systems, the Examiner disagreeing with the position of Transco counsel who, after pointing out that the "gas industry, like any industry, is in the process of constant evolution," contend that the "facts which exist at any particular time are those which must determine the outcome of any contemporary case."

Competitive proceedings such as this take the Commission back to the firmly established proposition that first things come first; that economic problems require economic solutions; and that, to use the words of the Supreme Court in *New York Trust* v. *Eisner*, 256 U.S. 345, 349 (1921), "a page of history is worth a volume of logic."

It would be improper to consider and decide this case by beginning with the superstructure of the Atlantic Seaboard and Transco systems. One must begin with their foundations, keeping in mind the fact that a unique feature of pipeline companies, as compared with other businesses, is their extraordinarily large plant investment requirements, in relation to operating expenses (most of which represent gas purchase cost) and annual revenues, and the further fact that the physical extension of pipeline service to major untapped virgin areas is at an end. In the areas now being served, the rate of growth is tied to population and industrial expansion.

Concerning the competitive issue here involved, it will be helpful to recognize what the Supreme Court recognized in *Federal Communications Commission* v. *RCA Communications*, 346 U.S. 86, 93 (1953), "that encouragement of competition as such has not been considered the single or controlling reliance for safeguarding the public interest."

What the instant case is all about is what happens when past friendly cooperation receives a severe jolt through Transco's attempted foray directly into Atlantic Seaboard's market with a lower unit cost of service due primarily to its relatively high load factor[8] operations, with which Atlantic Seaboard, which necessarily carries on substantially lower load factor business, cannot compete. Further complicating the situation in an ominous way is the fact that the service Washington and Commonwealth seek from Transco admittedly involves reductions in their annual purchases from Atlantic Seaboard substantially below historical levels.

From a regulatory viewpoint, the operations of Atlantic Seaboard and Transco can more properly be contrasted than compared. They should be contrasted for the purpose of ascertaining and maintaining the essential worth of each, not compared for the purpose of giving to Transco, or permitting it to take over, part of the business of Atlantic Seaboard. It took both the Atlantic Seaboard and Transco types of pipelines to advance the natural gas industry to its present peak of success. Neither type can now be permitted to endanger the existence and ability of the other to perform effectively.

Although there still may be room in the natural gas business for competition, the rates of pipelines must continue to be based on cost of service tied to a depreciated original cost base, not competition. This means that the greater the loss of business by one pipeline to another, the higher will be the unit cost of service of the pipeline having its business siphoned away. The "vicious cycle" Atlantic Seaboard's policy witness thought this would create was explained as follows (Tr. 386–87):

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[8] The "load factor" measures the extent to which a purchaser uses gas to which it is contractually entitled from its supplier. It is the ratio of average daily purchases for the year to peak day purchases.

> The immediate result would obviously be a worsening of Seaboard's sales load factor, with a concomitant increase in Seaboard's unit cost of service. This would inevitably be reflected in the wholesale rates of Seaboard and * * * would be reflected back into United Fuel [Atlantic Seaboard's affiliate and principal supplier]. Whatever additional costs would thereby be imposed on United Fuel, a substantial portion thereof would, in turn, flow forward to Seaboard.
>
> This worsening of Seaboard's sales load factor, and the increased costs associated therewith, can only result in providing additional incentive to Washington and Commonwealth, as well as Seaboard's other customers, to obtain an ever increasing proportion of their requirements from Transco. Thus, a vicious circle would be initiated which could only lead to more and more serious detriment to Seaboard and its customers.

The rates of Atlantic Seaboard and Transco as they exist today are the product of the divergent historical development of the two systems. It appears that what Washington and Commonwealth are here seeking is to have two pipeline suppliers so as to enable them to play one against the other to their advantage and at the expense of Atlantic Seaboard and its other customers. Attainment of this goal would create a situation in which Atlantic Seaboard would have the past record of service; Transco the future cream-skimming operation. Transco would get assured business, Atlantic Seaboard greatly dimmed prospects—hardly an expected reward for bringing customers to their present peak of performance and expansion.

The Examiner's treatment of this case assumes that the Commission will cause Atlantic Seaboard's future operations to be carried out under a tariff recognizing, as did Atlantic Seaboard's superseded Seventh Revised Volume No. 1 tariff, the fundamental economics of the natural gas business in general and the problems and operations of Atlantic Seaboard in particular. There is, of course, no justification for the Examiner making any other assumption.

Instead of following a policy of communication and teamwork essential to the attainment of proper goals, Washington and Commonwealth took matters into their own hands (see *infra*, pp. 184–187), kept Atlantic Seaboard in the dark with respect to their negotiations with Transco and threw Atlantic Seaboard off balance and it has continued to be off balance in attempting to meet the requirements of the comparative hearing.

A pipeline system such as Atlantic Seaboard has to be used on a thoroughly planned basis and under a carefully planned tariff as to which it must be made certain that all of a pipeline's customers can live. In this regard, if experience has taught anything, it is that it takes a long time for the emergence of a properly balanced tariff. Both Atlantic Seaboard and Transco operated under well established tariffs around which the business of their respective customers grew and flourished. But suddenly without warning, the commitments of Washington and Commonwealth with Transco confronted Atlantic Seaboard with a disruption of its fundamentally sound method of operation. In such a circumstance, Atlantic Seaboard or any other pipeline company can be expected to act, unilaterally if necessary, to do whatever they can to protect their businesses and investments.

At the time Washington and Commonwealth executed their commitments with Transco, Atlantic Seaboard's rates were embodied in its FPC Gas Tariff, Seventh Revised Volume No. 1. Faced with those commitments and the circumstances under which they were entered into, Atlantic Seaboard filed its new tariff, Eighth Revised Volume No. 1, which was designed to permit Atlantic Seaboard to more nearly compete with Transco.

It seems clear that Eighth Revised Volume No. 1 sacrifices fundamentals and proven methods of service and operation solely for competitive reasons. Obviously, where potential competition has the effect of destroying fundamentals and proven methods, two things must happen. First, the disrupting potential competition must never be permitted to materialize. Second, the terms of the proposed tariff of Atlantic Seaboard must be brought into line with fundamentals and proven methods. It may be pointed out in this connection that while the gas business must attempt to keep up with changing times as best it can, older views need to be adhered to in situations such as presented here, not because they are old or represent conventional wisdom, but because the situation returns which gives them validity.

Because Transco can now undersell Atlantic Seaboard, there is every reason to believe that it will always be able to do so. Apparently Washington and Commonwealth think so also for they have made no commitments to purchase additional gas from Atlantic Seaboard in the future. Since Transco has cheaper rates than Atlantic Seaboard, the Commission would, to be consistent, have to let other customers of Atlantic Seaboard, able and desiring to do so, also obtain their future requirements from Transco. As pointed out by the Commission in the Transco X-20 case (21 FPC 138 at 141): "Certainly, if we were to grant this request we would soon be confronted with many requests of the same general character and * * * we would have no fair or rational basis for denying * * * such requests."

Transco's proposal to serve Washington and Commonwealth is supported by Washington, Commonwealth and the Commission Staff; also by the statements of position filed by the Public Service Commission of the District of Columbia and the State Corporation Commission of Virginia. It is opposed by the Columbia Companies and the Coal Interest.

### TRANSCO'S DESIRE TO SERVE WASHINGTON AND COMMONWEALTH

After years of unprecedented growth, the physical extension of natural gas service to major areas is at an end, the major markets having been covered by the vast interstate pipeline network authorized by the Commission. However, at least for the foreseeable future, all indications point to a growing demand within presently served markets by reason of the twin pressures of population and industrial expansion. This should moderate gradually, rather than severely, the future rate of growth of pipelines.

In the business life of pipelines, and in business generally, the goal of growth—the business man's business—is taken as a matter of course. Pipelines must either grow or find themselves on a dead-end street. Since all major natural gas markets are now covered by pipeline service, how does a pipeline stimulate growth? If it is not content with the future sales prospects in its presently served markets, or if potential customers make it sufficiently enticing, it may seek to find, as Transco is doing here, new outlets through the invasion of markets of other pipelines. There are, however, alternatives.[4]

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[4] One alternative is for pipelines to diversify and expand into other fields as many pipelines are doing on a large scale because of the substantial inflow of funds they must put to use.

Another alternative available to those pipelines willing and able to do so, and which are making a fair return or more than a fair return, is for them to extend service to additional areas even where the proposed additional services fall, in an economic sense, into the marginal or submarginal category when considered apart from the pipeline's total business. As the Examiner stated in his decision issued April 12, 1965 in *Michigan Consolidated Gas Company, et al.*, Docket No. CP65-38, 33 FPC 913, aff'd. at 912:

> It is impossible for many distressed areas and communities to improve their economic status unless public utilities are public spirited enough to help them

A Transco witness testified that Transco desires to serve Washington and Commonwealth for the following reasons (Tr. 472):

> During the negotiations * * * both Washington and Commonwealth expressed strong desires of obtaining a second supplier in addition to the other benefits which Transco had to offer.
>
> Transco is in the business of transporting and selling natural gas. We are constantly looking for markets, both from existing and new customers, which will increase our business and will be of benefit to our system. In the cases of Washington and Commonwealth, we believe that the proximity of these customers to our existing system and the lower rates and various services offered by Transco make these companies natural customers of Transco. Furthermore, both Washington and Commonwealth have in the past been indirect customers of Transco through sales to Atlantic Seaboard. But Transco has not sold any additional gas to Seaboard since 1959 and, therefore, has not shared in the growth of Atlantic Seaboard's markets, including Washington and Commonwealth, since that date. Presumably this is due to the increasing sources of gas in the producing areas. * * *

The Examiner is unable to find any real basis for regarding Washington and Commonwealth as "natural customers of Transco." Atlantic Seaboard was around when Transco wasn't. Atlantic Seaboard was the partner of Washington and Commonwealth when they launched their natural gas operations. It has since continued to provide an increasing natural supply making possible the advancement of Washington and Commonwealth, permitting them to enjoy increased business and elevating them to their present heights. Moreover, it appears that the Commonwealth and Transco systems were constructed and began operations at about the same time, yet Commonwealth looked to Atlantic Seaboard for its service—a decision which determined its destiny.[5] These and other factors show Washington and Commonwealth to be "natural customers" of Atlantic Seaboard, not Transco.

Transco seems to have arrived a little late to support a valid claim that Washington and Commonwealth are its "natural customers." It has no past performance record to go on insofar as Washington and Commonwealth are concerned. Not only this, the service Washington and Commonwealth seek from Transco admittedly involve reductions in their annual purchases from Atlantic Seaboard substantially below historical levels in order to achieve load factors of purchases from Transco not supportable by the character of their markets. There is nothing "natural" about this. It in effect asks Atlantic Seaboard and its other customers to subsidize Transco's business. But this is

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> out of their doldrums, when they are able to do so, by providing needed utility services. There are, of course, limits to which any utility may go.
>
> It therefore appears that regulatory agencies might serve the public interest best by encouraging gas utilities to funnel more of their success into wider services areas. "The various parts of a public utility's system need not and cannot be equally profitable," *Minneapolis Gas Co.* v. *Federal Power Commission*, 278 F. 2d 870, 871, cert. den. 364 U.S. 891. It is settled that all that is required is that the over-all operations be sufficient to give the net returns to which the utility is entitled * * * (p. 915, n. 2).

Still another alternative is for major pipelines, not now doing so, to follow Northern Natural Gas Company's commendable example and seek out and provide service to literally hundreds of small communities with economic bottlenecks and which are pressing their efforts to achieve economic growth, higher standards of living, and make needed contributions to the Nation's economy.

[5] Baltimore Gas and Electric Company, formerly Consolidated Gas Electric Light and Power Company of Baltimore, also preferred Atlantic Seaboard service over Transco's in 1948 (7 FPC 24, 29, 33).

not their task. It could easily erode the entire fabric of Atlantic Seaboard's service on a widening front, each diverted Mcf twisting the screw of the unit cost of gas upward. Clearly, Atlantic Seaboard ought not now be required to take a back seat and perhaps proceed unconstructively in the future.

The fact that Transco has not sold any additional gas to Atlantic Seaboard since 1959 is not cause for permitting direct competition now. If Transco thinks it can support a claim that Atlantic Seaboard should have in the past, or should in the future, purchase more gas from Transco, the way is and has always been open through intervention in Commission proceedings, or through the filing of a complaint, to prove up a case. If it doesn't or can't do that, additional Transco service to Atlantic Seaboard would have to be regarded as unsupportable.

In passing it may be mentioned that there has been a frequent exchange of gas between the Atlantic Seaboard and Transco systems at their four points of interconnection (Tr. 272).

Both Transco and Atlantic Seaboard have commendable service records and each has played a necessary part in the phenomenal growth of the natural gas industry.

In fulfilling its public utility obligations, Atlantic Seaboard has never required its wholesale customers, wholly dependent upon it for gas supply, to maintain their load factor of purchases at any particular level; has historically shared with its customers the risk of fluctuations in annual sales resulting from weather and economic conditions; has not required its full requirements customers to maintain any minimum level of annual purchases; and embodied in its tariffs a provision making it clear to its customers that it considered its obligation under the CDS tariff as one requiring it to meet the full requirements of their markets (Tr. 371). Why did Atlantic Seaboard operate this way? It was willing to. It was in quest for success for all. Its objective continues to be achieved. It rendered the kind of reliable services that enabled its customers to live, attract capital, and thrive.

While Transco and Atlantic Seaboard each operates a pipeline system, the markets of one, Transco, have from the start produced for it relatively high load factor operations. In contrast, the markets of the other, Atlantic Seaboard, were capable of generating relatively low load factor operations. The result is that while each of these systems must have the necessary high-cost capacity to handle the peak day requirements of their customers, the higher year-round use of Transco's facilities automatically produces a lower unit cost of service. That is to say, everything else being equal, the greater the volume of business of a pipeline, the less it costs, proportionately, to provide a single unit of service.

The importance of the historical absence of a minimum commodity charge in the tariffs of Atlantic Seaboard and other Columbia Companies, compared with the historical presence of such charges in the tariffs of other pipelines, including Transco, has been noted by the Commission (28 FPC 860, 863):

> We point out also that the vulnerability of Columbia to competition stems in large part from its past policy of sharing with its customers the risks of declining business. The demand rates charged by Columbia reflect Columbia's willingness to share the risk of unavoidable sales losses with its customer companies. The absence of a minimum load factor in the Columbia tariffs meant that no customer would be penalized for unavoidable loss of sales volumes in any particular period. Columbia's competitors have a much higher demand charge, with minimum bill provisions requiring from 65% to 75% load factor. * * *

### THE COMMISSION'S EFFORTS TO HAVE TRANSCO PROVIDE UNDERGROUND STORAGE

Transco's counsel assert that—

> Transco's system, because of the great distance between its supply areas and its terminal markets, was originally founded upon a high load factor market in order to make its service feasible. Since that time, Transco has developed a storage service[1] and more recently a liquefied natural gas service.[2] Its markets, its rates and its load factors have been geared to the needs of the customers and the demands of the times.

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[1] The initial service of Transco was instituted in 1954 under its Rate Schedule S-2, not in 1958 as claimed by the Columbia System. See 13 FPC 992.

[2] Authorized July 3, 1963 in Docket No. CP65-228, 30 FPC 38.

This view is plausible enough but a fuller background statement seems warranted.

Beginning with Transco's first certificate case in 1948, the Commission attempted to prod Transco to increase its load factor by undertaking an underground storage program, rather than by exclusively selling valley interruptible gas for inferior industrial use. In this manner, gas could be reserved to augment the number of years of deliverability to meet essential needs.

When Transco's initial certificate for a pipeline was granted, the Commission noted that Transco intended to sell large volumes of interruptible gas for underfiring boilers in electric generating plants, principally for the purpose of maintaining a high load factor; that the Commission had reopened the proceeding to receive evidence as to a storage plan which would "assure utilization of the full capacity of the project in such manner as will best serve the broader public interest and the economic feasibility under such plan"; that Transco had introduced evidence but claimed "that such a project was not economically feasible"; that, nonetheless, the Commission felt Transco's exploration of the storage possibility to be insufficient, and so directed Transco to undertake a thorough study of off-peak storage programs. The Commission suggested that it would expect the result of such a study to be reflected in any Transco expansion proposals (7 FPC 24, 40–42, 47). The Commission also conditioned the certificate on filing of a tariff which would not discourage summer storage as against boiler fuel sales (7 FPC at 38–40, 47).

In Transco's next succeeding major certificate proceeding the Commission recalled its earlier concern for development of a storage plan and stated (9 FPC 32, 47–48):

> The testimony adduced in this proceeding quite definitely indicates that the storage of gas during off-peak summer periods for subsequent withdrawals during winter periods of peak demand is still desirable and that the storage of such gas at such times is preferable to burning gas for boiler fuel purposes. Testimony of Mr. Forbes, executive vice president of Consolidated Edison * * * indicated the willingness of his company to pay a premium for storage gas because of increased reliability of service.

The Commission approved Transco's efforts and urged the bringing of a storage project to fruition. The Commission again directed a tariff which would deter over-extensive use of gas as boiler fuel, and assure the priority of any storage program, once facilities were developed for it, over boiler fuel uses (9 FPC at pp. 48–50, 55, 64). The tariff was approved at 9 FPC 1269.

The Commission did grant Transco additional certificates for interruptible boiler fuel services when the system had excess capacity, but it continued to press for development of the storage alternative (11 FPC 605, 615; order issued December 15, 1955 in Docket No. G–1873). It certificated gas service to industrial customers for those operations natural gas was a uniquely desirable fuel (9 FPC 1237; 11 FPC 590, 14 FPC 1, 17 FPC 333, 346), and it certificated gas transportation service (9 FPC 32, 54).

Transco did not finally present a storage program until the proceeding in which its proposed X-20 service to Consolidated Edison Company of New York, Inc., was involved.[6] That proposal, to provide 191,000 Mcf a day for winter peak needs from the Leidy Storage Field in Pennsylvania, was certificated in 1958 to Transco and others (20 FPC 264). Thereafter the Commission authorized Transco to develop, again with others, the Wharton Storage Field also located in Pennsylvania (29 FPC 119 (1963); 30 FPC 1335; 31 FPC 242).[7]

Transco's storage service (GSS) has enabled it in recent years to render service at relatively low load factors (to the extent that available storage capacity exists), and this service undoubtedly saved the day for many of its customers in meeting the required 65 percent minimum CD load factor. However, the GSS service was commenced after Transco's pattern as a high load factor supplier was firmly established.

As a result of the differences in historical development, Atlantic Seaboard currently experiences a sales load factor to its wholesale customers of about 50 percent (Tr. 367, 373; Ex. 49, Schedule 1), which is to be compared with Transco's sales load factor of approximately 70 percent (Tr. 2381–82). The impact of this difference in sales pattern upon the rates of Atlantic Seaboard is obvious. As Atlantic Seaboard's policy witness testified, the company with a higher load factor sales pattern will naturally enjoy both with a lower total unit cost of service per Mcf sold and also a lower commodity rate (Tr. 374).

A witness of the Columbia Companies pointed out that Transco's ratemaking load factor is over 95 percent (Tr. 2234–37), and a Transco witness testified that it is approximately 100 percent (Tr. 4374–75). This makes it even more clear why Transco's commodity rate is lower than Atlantic Seaboard's.

A Washington witness testified as to a physical difference in the development of the Columbia and Transco systems which, at least in part, accounts for the present differential in their rates. He referred to the character of the markets served by the Columbia System, particularly United Fuel, and pointed out that this has necessitated a pipeline network consisting of relatively smaller sizes of pipe than that existing on the Transco System (Tr. 6234–35). But different market characteristics require different kinds of pipeline systems, and as counsel for the Columbia Companies aptly point out, "in the absence of the smaller diameter pipeline networks, many areas presently being served would be without natural gas service today."

### APPARENT NEED OF TRANSCO'S PRESENT CUSTOMERS FOR ITS GSS CAPACITY

As pointed out in the Examiner's decision issued June 13, 1966, doubt exists as to whether the Wharton Storage Field can be fully developed as planned.

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[6] The initial storage service referred to by counsel for Transco as having been instituted by Transco in 1954 involved a loan of gas by Texas Eastern Transmission Corporation to Transco, not a direct injection and withdrawal of gas by Transco from its own underground storage. That arrangement was made necessary by reason of the fact that the market requirements of Transco's customers in the Philadelphia-New Jersey-New York area had increased to the degree that they exceeded the transmission capabilities of Transco's system. Among the benefits to be derived in carrying out that desirable scheme of operations was that "Public Service Electric & Gas Company, Philadelphia Electric Company, and Brooklyn Union Gas Company, all of which now receive gas at high annual load factors, would substantially reduce the volumes now used by each for boiler fuel." (13 FPC 992, 994).

[7] By their application at Docket No. CP65–182, Transco and its partners, United Natural Gas Company and North Penn Gas Company, proposed the final step in their joint development of the Wharton field. Docket No. CP65–182 is part of the consolidated proceeding referred to *supra*, p. 161, n. 2.

But assuming that the development of this field can be carried out in the piecemeal fashion contemplated, namely, as Transco's markets for GSS service develop, Wharton would provide Transco with an additional 135,882 Mcf per day of deliverability. Of this amount, 99,515 Mcf per day would be unallocated if all authorizations sought by Transco herein relating to storage are granted.

However, if the proposed transfer of 55,000 Mcf from GSS service to CD service for Consolidated Edison Company of New York, Inc. (Con Ed), is denied, there would only be 44,515 Mcf per day of unallocated storage deliverability. This assumes the Commission grants Transco's proposal to serve Washington and Commonwealth. If the proposed substitute service to Con Ed, as well as the proposed service to Washington and Commonwealth (which includes a total of 51,000 Mcf per day of GSS service), are all denied, there would be 95,515 Mcf per day of Wharton deliverability unallocated, assuming Wharton can be fully developed.

In this proceeding alone, present customers of Transco are seeking 55,017 Mcf per day of additional GSS service. This indicates that Transco's present customers will, in a relatively short time, need all of the storage deliverability that Wharton will be able to provide. Accordingly, it would not appear to be in the long range interest of Transco and its present customers to permit Transco to attach additional customers of the size and load characteristics of Washington, for example, for it will sop up the GSS capacity of limited availability. As the evidence shows, Washington is now in the process of developing its Brandywine underground storage (see *infra*, pp. 189–190), and it may be able to develop other underground storage in which it is interested (Tr. 600). Atlantic Seaboard will also be able to provide storage service to Washington in the future (see *infra*, pp. 207–208.

### SERVICE AREAS OF AND POINTS OF SUPPLY TO WASHINGTON AND COMMONWEALTH

#### *Washington*

Washington distributes natural gas in the metropolitan area of Washington, D.C.[8] It has been a customer of Atlantic Seaboard since 1931 and is Atlantic Seaboard's largest customer.

Deliveries by Atlantic Seaboard to Washington are made at two nearby points—one in Virginia, the other in Maryland (see *infra*, p. 203).

Transco proposes to make deliveries to Washington in Virginia where its Zone 2 rates are lower than its Maryland Zone 3 rates.[9]

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[8] Washington's expanding service area is comprised of the District of Columbia, Montgomery and Prince Georges Counties, Maryland, the greater part of Arlington, Fairfax, Loudoun and Prince Williams Counties, Virginia, and the City of Alexandria, Virginia. Washington also provides service in nearby areas through two subsidiaries —Shenandoah Gas Company and Frederick Gas Company.

[9] Transco's three rate zones are:

Zone 1–Louisiana, Mississippi, Alabama and Georgia.
Zone 2–South Carolina, North Carolina and Virginia.
Zone 3–Maryland, Pennsylvania, New Jersey and New York.

The District of Columbia borders on both Virginia and Maryland and is not in any one of Transco's three rate zones. Washington provides service in the District of Columbia and in adjacent areas in Virginia and Maryland.

According to the Examiner's understanding, the Commission has, in a few instances, permitted distributors to take delivery in the lower of two rate zones to enable the distributors to initiate service in virgin areas. That is not the situation here. Here the area involved is already served by one of the two pipelines competing for business therein. Whether or not this would call for a change in boundaries of Transco's rate zones, in the event it is authorized to serve Washington, is for the Commission to decide initially.

*Commonwealth*

Commonwealth, Atlantic Seaboard's third largest customer, owns a pipeline system extending from Atlantic Seaboard's Bickers Compressor Station in Green County, Virginia to Norfolk. That system, placed in operation in 1950, serves one direct industrial customer and several distributors providing natural gas service in and near the principal urban areas of the Tidewater section of Virginia.[10]

For emergency purposes, the Commonwealth and Transco systems are interconnected at Boswell's Tavern, Virginia, about twenty miles from Atlantic Seaboard's Bickers delivery point. These facilities are such that in an emergency Commonwealth could receive from Transco its entire peak day requirements. Transco proposes to use these same facilities to make the deliveries proposed herein, as well as any additional deliveries in the future, to Commonwealth.

### THE TRANSCO AND ATLANTIC SEABOARD SYSTEMS AND INTERCONNECTIONS

Transco's Texas-to-New York pipeline system began operations in 1950, being certificated originally to serve an area of New York, New Jersey and Philadelphia and part of the south which was otherwise without any natural gas. It is almost entirely a wholesaler of natural gas, its direct sales representing less than one percent of its total sales (Ex. 62, p. 1).

Transco's pipeline, en route from its sources of supply to its primary service area in the northeast, passes through the major portion of Atlantic Seaboard's service area of Virginia, West Virginia, Maryland and the District of Columbia, served by Atlantic Seaboard since 1931.

Atlantic Seaboard, a wholesaler of natural gas, is an operating segment of the Columbia System.[11] The Columbia System serves parts of seven States and Washington, D.C. Three of the Columbia System pipeline subsidiaries are Columbia Gulf Transmission Company (Columbia Gulf), United Fuel Gas Company (United Fuel) and Atlantic Seaboard. The connected Columbia Gulf-United Fuel-Atlantic Seaboard systems extending from Louisiana and other producing fields represent their line of natural gas supply to Commonwealth and Washington. That is to say, Columbia Gulf is the transporter for United Fuel of gas United Fuel purchases in Louisiana. United Fuel is the principal supplying company for the Columbia System (Tr. 6900) and is Atlantic Seaboard's principal supplier.

While Atlantic Seaboard obtains the major portion of its gas supply from its affiliate, United Fuel, it is also a customer of Transco. The pipeline systems of Atlantic Seaboard and Transco are in fact interconnected at four points—two in the immediate vicinity of Washington's service area, and two in Baltimore County, Maryland where Atlantic Seaboard makes deliveries to its second largest customer, Baltimore Gas and Electric Company. Exchange of gas between the Atlantic Seaboard and Transco systems at the four points of interconnection have taken place frequently (Tr. 271–72).

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[10] Commonwealth sells to distributors serving in and near the Cities of Richmond, Petersburg, Hopewell, Colonial Heights, Portsmouth, Norfolk and Newport News, Virginia, as well as the remainder of the Hampton Roads area. Commonwealth's direct industrial customer, Allied Chemical Company, is located in Hopewell.

[11] The Columbia System is comprised of the parent company. The Columbia Gas System, Inc., a service company which coordinates system planning, etc., and eighteen operating subsidiaries.

### PRESENT AND PROPOSED SERVICES TO WASHINGTON AND COMMONWEALTH

*By Atlantic Seaboard To Washington And Commonwealth*

While Commonwealth needs additional natural gas, it contemplates no increase in its present contract demand entitlement of 171,800 Mcf from Atlantic Seaboard. Moreover, Washington has not requested Atlantic Seaboard for any increased volumes beyond the 13,500 Mcf requested for the 1965–66 winter (Tr. 5734).

Washington and its subsidiary, Shenandoah Gas Company (Shenandoah),[12] have a joint commitment, effective since December 1, 1964, to purchase a total of 480,000 Mcf of contract demand from Atlantic Seaboard. This was increased, pursuant to temporary authority issued by the Commission on September 4, 1965, by 13,500 Mcf, or to a total of 493,500 Mcf, for the 1965–66 winter.[13]

*Proposed By Transco To Washington And Commonwealth*

Transco seeks authority to render pipeline (CD) service in the amount of 55,000 Mcf per day to Washington and 27,700 Mcf per day to Commonwealth, such service to commence with the 1965–66 winter season at lower levels and building up to the full amounts in the 1967–68 winter season.

Additionally, Transco requests authority to (1) sell 49,000 Mcf per day of general storage service (GSS) to Washington, commencing with 15,000 Mcf per day during the 1966–67 winter season and building up to the full 49,000 Mcf in the 1968–69 winter season, and (2) to sell 2,000 Mcf per day of GSS service to Commonwealth commencing with the 1966–67 winter season.[14] Com-

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[12] Washington and Shenandoah, a small distributor serving about 2200 customers in Frederick County, Virginia, and Berkeley and Jefferson Counties, West Virginia, jointly purchase natural gas from Atlantic Seaboard. Accordingly, Washington's requirements discussed herein include those of Shenandoah (Tr. 598–600).

[13] The total daily entitlements of 493,500 Mcf from Atlantic Seaboard would be purchased in major part under Atlantic Seaboard's CDS–1 Rate Schedule, and in part the Winter Service ("WS") Rate Schedule of its FPC Gas Tariff, Eighth Revised Volume No. 1.

[14] Washington's commitment with Transco provides for the sale by Transco to Washington of contract demand and storage services in the following volumes (Ex. 63, part 22):

[Mcf per day]

| Commencing | Contract demand | Storage service |
|---|---|---|
| Nov. 1, 1965 | 28,000 | |
| Apr. 1, 1966 | | 15,000 |
| Nov. 1, 1966 | 40,000 | |
| Apr. 1, 1967 | | 27,000 |
| Nov. 1, 1967 | 55,000 | |
| Apr. 1, 1968 | | 49,000 |

Commonwealth's contract demand requirements of 27,700 Mcf are proposed to be provided by Transco as follows: 10,600 Mcf for the year beginning December 1, 1965; 19,700 for the year beginning December 1, 1966, and 27,700 Mcf for the years beginning on and after December 1, 1967. Commonwealth proposes to take such additional volumes at as nearly 100 percent load factor as practicable (Ex. 63, part 14).

Commonwealth's witness testified that Commonwealth could use Atlantic Seaboard's new WS rate schedule only to the extent that Commonwealth's customers request such service for their own peak shaving. He further testified that Commonwealth has contracted for 2,000 Mcf per day of GSS service from Transco because its customer, the City of Richmond, had indicated its desire to obtain such storage service from Commonwealth.

monwealth's commitment to Transco recites that Commonwealth anticipates that its storage requirements will increase in the future.

Commonwealth's commitment with Transco further provides that Commonwealth "may also desire to utilize a rate schedule corresponding to your ACQ-3 schedule, which you have indicated you will file for our zone upon request" (Ex. 63, part 14).

In passing it may be pointed out that there is no dispute in this case as to the over-all market requirements of Washington and Commonwealth.[15]

### IMPACT OF LOSS OF SALES

According to Washington's and Commonwealth's own estimates as to the changes which would occur in their contemplated purchases from Atlantic Seaboard in the event Transco's proposal is certificated, the loss of their loads would occasion a total accumulated reduction in purchases from Atlantic Seaboard over the period 1965 through 1968 of 68,053,700 Mcf (Tr. 229-234; Ex. No. 4).

The significance of the contested loads to Atlantic Seaboard is disclosed by an examination of its pattern of growth as experienced in the past and the impact which the loss of the loads would have upon its estimated growth in the future. As to the past, analysis of Atlantic Seaboard's actual experience during the years 1960 through 1964 shows that Washington and Commonwealth accounted for well in excess of 50 percent of Atlantic Seaboard's growth, both in terms of annual sales and contract demand increases (Tr. 353-354, Ex. No. 45, Sched. 1). The growth experienced by Atlantic Seaboard in annual sales during such five years averaged 7 percent per year. Should Atlantic Seaboard retain the contested Washington and Commonwealth loads, its growth in the future would average about 6.4 percent annually through 1968, or slightly lower than Atlantic Seaboard's past experience (Tr. 358, Ex. No. 46, Sched. 1).

In contrast, the loss of the Washington and Commonwealth loads would reduce Atlantic Seaboard's growth in annual sales to a rate of about 2 percent per year through 1968. That is to say, about 70 percent of Atlantic Seaboard's growth potential would be lost (Tr. 359-360).

In contrast to the situation on Atlantic Seaboard's system, the Washington and Commonwealth loads are relatively insignificant to the Transco system. Transco's growth experience in the immediate past has far exceeded that of Atlantic Seaboard. By comparing Transco's jurisdictional sales during the year 1959 of 384,461,692 Mcf with Transco's jurisdictional sales during 1964 of 579,336,886 Mcf (Tr. 4509, 6705), it appears that Transco experienced a growth of 50.7 percent over the five-year period. During the same period Atlantic Seaboard's annual sales increased from 148,083,042 Mcf in 1959 to 199,894,937 Mcf in 1964, or a growth of 35 percent (Ex. No. 46, Sched. 1).[16]

As Atlantic Seaboard's policy witness testified, the loss of the contested Washington and Commonwealth loads "could only have a deadening effect at the very point in time when the management of Seaboard has a reasonable expectancy of bringing about a program of continuing rate relief for the company's customers" (Tr. 380).

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[15] The requirements of Washington are contained in Exhibit No. 77 and those of Commonwealth are reflected in Items CC and DD by reference.

[16] Significantly, Transco's 50.7 percent growth compared to Atlantic Seaboard's 35 percent growth relates to a base volume in 1959 (384,461,692 Mcf) over twice the size of Atlantic Seaboard's 1959 base volume (148,083,042 Mcf).

### PLAN OF COMMONWEALTH AND WASHINGTON TO DIVERT TO TRANSCO VOLUMES HISTORICALLY PURCHASED FROM ATLANTIC SEABOARD

*Commonwealth's Plans*

Notwithstanding that in the past Commonwealth has experienced an overall purchase load factor approximating 65 percent, it proposes to buy gas from Transco at 100 percent load factor (Tr. 5216).[17] A Commonwealth witness was asked how Commonwealth proposed to achieve such a high load factor of purchases from Transco. His answers were extraordinarily candid (Tr. 5217–18):

> Q. * * * What I am asking you is, in view of your historical factor of purchases that you agreed is about 65 percent, * * * how it is you propose to achieve a 100 percent load factor of purchases from Transco for the years 1966 through 1968.
>
> A. By reducing its take from Seaboard.
>
> Q. Well, * * * so there won't be any doubt whatsoever * * * as to what you propose to do, I take it you agree that it is a fact that Commonwealth intends to transfer to Transco substantial volumes of annual purchases which in the past have been taken from Seaboard?
>
> * * * * * * *
>
> A. Yes, sir.

Atlantic Seaboard's historical load which Commonwealth plans to divert to Transco is substantial and represents a sizable portion of the total volumes which Commonwealth anticipates purchasing from Transco. An Atlantic Seaboard witness described the relationship of the diverted load to the total load (Tr. 361–62; 5220–21): "Commonwealth's purchases during the 12 months ending November 30, 1965 (the twelve months immediately preceding the initiation of purchases from Transco), are estimated to total 42,037,930 Mcf. During the next succeeding 12-month periods, Commonwealth, by its own estimate as contained in Tab C of Exhibit No. 3, contemplates purchases from Seaboard of 41,191,700 Mcf and 39,595,300 Mcf, respectively. The reductions from the 12 months ending November 30, 1965 are thus 846,230 Mcf and 2,442,630 Mcf, or a total reduction under present load of 3,288,860 Mcf over the two-year period. It is contemplated purchases from Transco during the same period (see Tab C of Exhibit No. 3) aggregate 10,859,500 Mcf. In this case the transfer of present load served by Seaboard would exceed 30 percent of Commonwealth's proposed purchases from Transco."

Also significant is the fact that a substantial portion of Commonwealth's planned cutbacks on Atlantic Seaboard occur during the summer months (Tr. 233–34, Ex. No. 5).

An example of what the future looks like for Atlantic Seaboard can be seen from the fact that a new agreement has been entered into between Commonwealth and Allied Chemical calling for the purchase of an additional 4,000 Mcf per day from Commonwealth (Tr. 5208, 5297). Commonwealth proposes to take this increment from Transco. It is Commonwealth's intent to purchase the 4,000 Mcf per day increment at 100 percent load factor from Transco (Tr. 5337). As Commonwealth's witness testified, if it eventuated that Allied's purchases were at a level below 100 percent load factor, Commonwealth nevertheless would attempt to purchase the 4,000 Mcf per day at 100 percent load factor from Transco and that this necessarily would mean that Commonwealth would seek to divert to Transco still more of Atlantic Seaboard's historical load (Tr. 5338–39).

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[17] Exhibit 49, Schedule 1, reflects the following load factors of Commonwealth's purchases during the past five years: 1960, 65.8 percent; 1961, 64.3 percent; 1962, 66.8 percent; 1963, 66.9 percent; and 1964, 66.3. percent.

Further reference to Commonwealth's plans is hereinafter discussed in connection with Washington's plans.

*Washington's Plans*

Washington's historical purchase load factor has approximated 40 percent.[18] Despite the fact that its purchase pattern is not projected to change in the future, Washington plans to purchase gas from Transco at 99.53 percent load factor in 1965, 67.72 percent in 1966, 61.67 percent in 1967, 43.04 percent in 1968 and 48.19 percent in 1969 (Tr. 5724–25).[19] These cutbacks would be achieved by cutbacks on Atlantic Seaboard, as evidenced by Washington's planned purchase load factors from Atlantic Seaboard. Washington's load factor of purchases from Atlantic Seaboard would decline from 42.27 percent in 1965 (Tr. 5721) to 37.86 percent in 1969 (Tr. 5819). The 37.86 percent load factor on Atlantic Seaboard during the year 1969 is to be compared with the 48.19 percent load factor at which Washington plans to take its purchases from Transco during that year. Similarly, the 37.27 percent load on Atlantic Seaboard in 1968 (Tr. 5722) is to be compared with (1) Washington's overall purchase load factor during that year of 40.68 percent, and (2) Washington's plan to purchase from Transco at 53.04 percent load factor.

The testimony of a Washington witness indicates that Washington was thinking in terms of requesting an additional total daily entitlement of 37,500 Mcf per day over the period November 1, 1965 through November 1, 1967, which additional 37,500 Mcf per day on the peak is to be accompanied by a decrease in Washington's annual purchases from Atlantic Seaboard. On the basis of that thinking, Washington's estimated purchases from Atlantic Seaboard during the year 1965 in the event it obtains a supply of gas from Transco are 71,013,000 Mcf, which is to be compared with its estimate of purchases from Atlantic Seaboard during 1968 of 70,727,000 Mcf, or a reduction of 286,000 Mcf (Tr. 5729–37). In this connection, counsel for the Columbia companies point out in their brief (pp. 20–21) that "the problem becomes severely magnified when load diversion is accompanied by increased demand on the peak. The latter presents Seaboard with a genuine dilemma: if it should reject Washington's requests for an additional 37,500 Mcf of demand on the peak (which would be the course of action suggested by the lack of any annual volumes to be associated therewith), Washington would thereupon have to turn to Transco, and an incentive to divert still additional load from Seaboard to Transco would be generated. Seaboard's available courses of action in this situation are quite limited. As [Atlantic Seaboard's witness] points out, its only alternative would be to choose that course of action resulting in the least loss (2A/387)."

In connection with the volume of 37,500 Mcf referred to in the preceding paragraph, Washington, in its reply brief (pp. 15–16), emphasizes the fact that it has made no request of Atlantic Seaboard for increased peak day volumes for any year beyond 1965. Its counsel state: "At transcript page

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[18] Washington's contract demand purchase load factors during the past five years as follows: 1960, 39.4 percent; 1961, 39.6 percent; 1962, 41.1 percent; 1963, 40.2 percent; and 1964, 40.4 percent (Ex. 49, Sched. 1).

[19] These are Washington's overall purchase load factors from Transco. Washington's CD load factor on Transco is contemplated at 100 percent (Tr. 7591).

5734 (Vol. 42), [Washington's witness] testified that the only request Washington has made of Seaboard for increased peak day volumes is 13,500 Mcf for 1965–1966 and that it has made no further requests of Seaboard for any year beyond 1965." What Atlantic Seaboard would be faced with in this connection is hereinafter discussed (*infra*, p. 181). In its reply brief Washington further asserts that (pp. 17–18) it "can purchase volumes at the commodity rate from Transco only up to 100% load factor. To purchase additional volumes at the commodity rate when the purchases are already at 100% load factor would require the purchase of additional Contract Demand and payment of demand charges."

In passing it may be pointed out that a loss of business is a loss, whether in contract demand or in annual volumes, and as counsel for the Columbia companies point out in their brief (p. 10), "it is clear that the principles and policy considerations established in this proceeding will in large measure govern Seaboard's future stability, not only in terms of growth but also whether Seaboard will even be able to maintain the present levels of contracts with its customers." In this connection they call attention to the fact that Commonwealth's current service agreement with Seaboard reveals "that some 116,250 Mcf of Commonwealth's present contract demand with Seaboard of 171,800 Mcf expires on November 30, 1970. Will Commonwealth and Transco seek authority of the Commission at that time to transfer a substantial portion of such expired volume to Transco?"

The undesirable position in which Atlantic Seaboard now finds itself is further magnified by the fact that in the reopened partial requirements (PR) proceeding, hereinafter discussed, and in which hearings have been completed and an Examiner's decision filed, Washington and Commonwealth took the position that Atlantic Seaboard did not have a need for a PR rate schedule, a position which can reasonably be interpreted, in the light of the instant proceeding, as meaning that Washington and Commonwealth, now that they hope to be able to purchase gas from Transco, desire to be left completely free to manipulate load diversion to whatever extend they will find to their advantage in the future.

Another important factor to be borne in mind in connection with the PR proceeding is the fact that the 80 percent provision formerly approved by the Commission was inserted to give customers insurance against declining load factors, or industrial sales losses, but would, if it were now approved, be used to permit the transfer of load from Atlantic Seaboard to Transco. As a witness for Atlantic Seaboard explained with reference to Commonwealth (Tr. 2792–93):

> * * * It is clear that Commonwealth does not propose to purchase only its incremental requirements from Transco. It is its obvious plan to divert to Transco substantial quantities of Seaboard's existing load. In * * * approving the PR tariff, the Commission modified the PR tariff as filed so as to provide for a minimum bill based upon 80 percent of the customer's historical load factor.
>
> The 80 percent provision was inserted so as to give the customers flexibility to handle the situation of a declining load factor caused by circumstances beyond the customer's control. For example, Commonwealth, in the PR proceeding, urged such flexibility because of an asserted fear of loss of its industrial market.
>
> Recent experience has demonstrated, and most certainly the evidence in this proceeding proved, that the 80 percent provision will not be used

> as an insurance against declining load factors, or industrial sales losses, but rather as a device permitting the transfer of load from one pipeline to another, in this instance from Seaboard to Transco.

Counsel for the Columbia companies make this observation in their reply brief (pp. 15–16) in connection with Commonwealth's present intentions: "When it comes to logic, was it logical for Seaboard to assume that Commonwealth would throw aside its historical cost responsibility and openly plan to divert load to Transco? Is this the reward for 15 years of adequate service which would be indicated by logic? The [Commonwealth witness] acknowledged that the relationship between the management of Seaboard and the management of Commonwealth down through the years has always been most cordial (40/5396). Could Seaboard logically foresee that Commonwealth's position in the original PR hearings (in advocating that the minimum commodity charges be based upon 80 per cent of historical load factor) would be availed of to enable Commonwealth to abdicate its historical responsibilities and to transfer load from Seaboard to another pipeline? Contrary to the arguments in Commonwealth's brief (p. 25), Commonwealth's load diversion plans came as quite a shock to Seaboard."

In the instant proceeding, both Commonwealth and Washington based their estimates on the assumption that the Commission would reinstate the 80 percent PR rate schedule. Commonwealth, in its reply brief, reiterates its position that if the Commission "sees fit to impose 100% PR * * *, 80% PR * * *, or no PR * * * at all, Commonwealth will minimize its cost of gas to the extent possible under whatever schedule is in effect at the time."

Before discussing the PR proceeding, it is of interest to point out that, with reference to Atlantic Seaboard's new Eighth Revised Volume No. 1 tariff, a witness for Atlantic Seaboard testified that based upon the estimated annual purchases from Atlantic Seaboard for the twelve months ending October 31, 1965, Washington's exhibits reflect a shift in commodity volumes to Transco of 4,297,454 Mcf over the succeeding two years (Tr. 361). Similarly, for the same period, the shift of Commonwealth was shown as 3,288,860 Mcf (Tr. 361–2). Translating these losses into dollar impact upon Atlantic Seaboard, the most favorable computation from Atlantic Seaboard's standpoint results in a total net effect upon Atlantic Seaboard aggregating about $19,000 over a two year period. The fixed cost contained in the commodity component of Atlantic Seaboard's new tariff is approximately 0.5 cents per Mcf. Translating this fixed cost into the loss in new revenue occasioned by not making the 4,297,454 Mcf of sales to Washington results in a loss of about $20,000 which reduces to about $10,000 after taxes. A similar computation on the 3,288,860 Mcf claimed as being shifted by Commonwealth results in a total net loss of about $9,000.

While there is some disagreement as to just what would be the exact amount of Atlantic Seaboard's loss resulting from diversion of load under Eighth Revised Volume No. 1, Transco, Washington, Commonwealth and the Commission Staff contend that whatever the correct amount of the loss is, the effect thereof upon Atlantic Seaboard, under the new tariff, is *de minimis*. In this connection the point is made that the base load diversion will be volumetric only, since contract demands will not be reduced; that accordingly if only a volumetric load is lost, Atlantic Seaboard will lose that portion of its fixed costs (about 0.5¢) which it recovers in the commodity component of its rates.

What Atlantic Seaboard has, for all practical purposes, done in Eighth Revised Volume No. 1 is to design its firm rate schedules on a fixed-variable basis so that return, depreciation, taxes and all operating expenses, exclusive of purchased gas commodity costs, are recouped through the demand charge. According to the Examiner's understanding, this form of rate design, or cost allocation leading to such a design, has never been accepted by the Commission for any major pipeline company with the exception of one, namely, Midwestern Gas Transmission Company, and the situation no longer exists with respect to this company. In the Examiner's view, it is wholly inappropriate for Atlantic Seaboard to have a tariff which produces the result which Eighth Revised Volume No. 1 produces in this connection. The Examiner recognizes, of course, that it is essential for Atlantic Seaboard and the other Columbia Companies to have protection against load diversion which can be brought about either through accepted minimum bill practices or an appropriate PR rate schedule.

It appears that a proper tariff for Atlantic Seaboard would include a WS rate schedule which, when coupled with a contract demand schedule, has the effect of guaranteeing high load factor operations. Transco and other pipelines have such a tariff. Under a properly designed tariff, high load factor operations are as important to Atlantic Seaboard as to any other pipeline.

It should be pointed out also that by virtue of its storage operations the Columbia System for years has been able to operate to the best advantage of all of its customers through obtaining gas from the Southwest at 100 percent load factor. This essential function, the conversion of low load factor sales to high load factor purchases, represents a mode of operation which would soon become a thing of the past should load diversion by the Columbia System's customers receive sanction by the Commission.

The Examiner's understanding of the record agrees with that of counsel for Transco when they say in their brief (p. 48) that "It is true that both Washington and Commonwealth propose to purchase from Transco the maximum annual quantities permissible within the provisions of Atlantic Seaboard's tariff and the limitations in their contracts with Transco and to that extent will, if permitted by the Atlantic Seaboard tariff, transfer certain annual quantities to Transco in order to achieve the most economical supply."

### THE PR PROCEEDING

Washington and Commonwealth have always been full requirements customers of Atlantic Seaboard. If authorized to purchase gas from Transco they would become partial requirements customers of Atlantic Seaboard.

In 1958 four of the Columbia pipeline companies, including Atlantic Seaboard, filed partial requirements (PR) rate schedules—to supplement their then effective rates—to be applicable to any resale customer when it began purchasing gas from a second source of supply. Those filings were intended to provide base load protection to the Columbia companies and led to a Commission decision to modify, and as modified[20] to approve, the PR rate schedules (28 FPC 860). The Commission-approved schedules required PR customers to purchase (or in any event to pay for) a minimum volume of gas annually and monthly.[21]

The Commission's approval of the PR rates in modified form was set aside on review in *Lynchburg Gas Co.* v. *Federal Power Commission*, 336 F. 2d 942

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[20] The Commission modifications were primarily to reduce the minimum annual and monthly bills of PR customers to 80 percent rather than 100 percent of base-period load factor.

[21] As explained in Commonwealth's main brief, the purpose of the PR rate schedules was "to protect the various Columbia companies against anticipated losses of base load sales to other sources, particularly to pipe lines from the Southwest with commodity charges in most cases lower than those of the corresponding Columbia company in the same area. * * *"

(1964), and the case remanded for further proceedings which have been held and an Examiner's decision filed.[28] Lynchburg Gas Company's (Lynchburg) opposition was directed at the Commission's-approved PR rate for Atlantic Seaboard. None of the Columbia companies filing the PR rate schedules, nor any of their customers, other than Lynchburg, sought review of the Commission's order fixing the PR rates.

For the purpose of illustrating the need of the Columbia companies for PR rates, the *Lynchburg* case arose with respect to the wrong customer, at the wrong time, and not for the best reason. The situation can now be viewed against the better and larger background of the record in the instant proceeding.

While the court in *Lynchburg* recognized that use of PR rate schedules is fairly common throughout the natural gas industry, it stated that "the fact that other PR schedules might be valid does not mean that the schedule now under review is similarly valid" (336 F. 2d at p. 948, n. 8).

In connection with the Court's *Lynchburg* decision it should be observed that Lynchburg is a small customer, but a high load factor customer, of Atlantic Seaboard which, since November 1961, had been purchasing a supplemental supply of gas from Transco under a Commission certificate.[29]

As already stated, Lynchburg was the only customer of any of the Columbia companies which sought review of the Commission-approved PR rate schedules. One of the two grounds upon which the Commission based its approval of those schedules was that it was providing protection to those customers of the Columbia companies having no access to any alternate source of supply from being required to pay the higher rates which might result from the deterioration of some of the Columbia markets. However, this ground was not applicable to the then customers of Atlantic Seaboard since it appears that all of them are more or less conveniently located with reference to a second source of supply. This fact gives Atlantic Seaboard great concern in the instant proceeding.

The other ground upon which the Commission justified its action in *Lynchburg* was that it was protecting the Columbia companies filing the PR rate schedules against a deterioration of some of their markets. As the Commission must have been aware, the absence of a PR rate would dim, if not destroy, every projection beyond current experience. Its efforts were accordingly directed to spelling out not only the rights but also the duties and responsibilities of the suppliers and distributors to each other.

*Lynchburg* held, *inter alia*, that the record did not contain adequate factual support for the restraint imposed by the PR rate schedules; that the record should show which of the customers of the Columbia Companies are without access to a second supply and the extent of the potential deterioration in Columbia's markets that might be expected absent the PR rate. Said Judge Fahy (336 F. 2d at 948):

> True it is that proof of certain facts might be unavailable, or such proof as is available might be highly speculative or lacking in some other respect, and in such cases no doubt the courts should accord Commission

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[28] The Examiner's decision now pending before the Commission denied the use of the PR rate schedules by the Columbia companies involved. His denial was based upon the failure of the Columbia companies to show the extent of the deterioration of their markets that might be expected without the PR rates, or to show that disapproval of the proposed rates would result in such a substantial deterioration of their markets as to necessitate a rate increase.

[29] Another small customer of Atlantic Seaboard, namely, Roanoke Gas Company, was authorized by Commission certificate issued July 17, 1964, to purchase a portion of its supply from East Tennessee Natural Gas Company (32 FPC 158).

> expertise a broader range than ordinarily. * * * *However, there is no present indication that this is such a case.* * * * Where restraint is due to a compulsory tax imposed by a seller upon a buyer that fails to purchase a stipulated percentage of its needs from the seller the validity of the restraint must be supported by more than judicial speculation that it is justified. [Italics supplied]

As the Court pointed out there was "no *present* indication that" the Commission's expertise should be accorded "a broader range than ordinarily." However, insofar as Atlantic Seaboard is concerned, this is no longer true for the record in the instant proceeding provides what was lacking in the *Lynchburg* record.

What a PR rate schedule strives for, and what the Commission knows it has accomplished for many pipelines, is reasonable stability which is essential to progress. Its protection also assures that expensive facilities, already installed, will not be idled. To require a showing of the extent of potential deterioration in markets in the absence of a PR rate is, in the Examiner's view, to require the impossible. Proof of that which is incapable of proof is clearly not part of the burden of proof. Neither the Commission, pipelines using the PR rate, or their customers can demonstrate what conditions would now be like if pipelines using the PR rate had not been permitted to do so. What they can do is point with complete satisfaction to the stabilized and healthy conditions that have existed under PR rates.

Why is it impossible for Atlantic Seaboard to now show, in any acceptable way, the extent of its market deterioration in the absence of a PR rate (which, if authorized, would carry with it an obligation on the part of the customer)? In the first place, any estimate Atlantic Seaboard would make would have to be geared to the intentions and future performance of its customers. But as the present record shows, Atlantic Seaboard did not, for example, have advance notice of the negotiations carried on by Washington and Commonwealth with Transco (see *infra*, pp. 186–187). Moreover, the present intentions of Atlantic Seaboard's customers, if not attached to a PR or other suitable restraint, could be completely ignored by its customers in the future no matter how sincere their present intentions might be. What a pipeline's customers can be expected to do in the future will be governed by economic and other conditions actually experienced, not by present intentions unrelated to an appropriate obligation.[24] The point is that an estimate attached to an obligation has an entirely different quality than one which is not.

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[24] A more reasonable assumption cannot be imagined than that all Atlantic Seaboard's customers will in the future act according to their own estimates of their economic interests and seek to realize any profits that load diversion, if permitted without restraint, opens up to them. While such an assumption would seem to have a sound basis in common sense, overwhelming support as to its reasonableness is found in the plans of both Washington and Commonwealth.

Considerations applicable to this type of situation are those set forth in the Commission's decision in Transco's so-called X–20 case, which decision was affirmed on review by the Supreme Court, *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1961). As the Commission stated in denying rehearing (21 FPC 399, 402):

> * * * Transco and Consolidated Edison argue that there is no substantial evidence in the record to support the considerations on which our conclusions are based and that therefore our conclusions are speculative and unproved. For example, they argue that there is no evidence that we would soon be confronted with many requests similar to the X–20 proposal if we were to grant this request and that, in any event, future cases must be decided on their own merits. * * *
>
> We are unable to accept these arguments. It must be kept in mind that our function in deciding this case is not just "to appraise the fact and to draw

Footnote continues on following page.

Neither Atlantic Seaboard nor the Commission can presently reach any authoritative conclusion as to the extent of the deterioration of Atlantic Seaboard's business in the absence of a PR rate. However well-intentioned any attempted estimate might be, if it is not tied to a fixed obligation on the part of its customers, it could signify no more than the mood of customers at the moment. A hardening of the demands or position of any customer could take place at any time. Information considered reliable one day could be out-of-date the next. One thing is certain, where a distributor has more than one supplier it can be expected to live, to the extent possible, off the supplier having the lowest unit cost of gas irrespective of the effect thereof upon the customers of the other supplier. The higher cost supplier, together with its other customers, would be left to fend for themselves and they would likely have on their hands a very expensive and inefficient pipeline system operation. Atlantic Seaboard, of course, did not build up its business to have it put on the skids by customers its service has made strong.

While it might be easy to say that Atlantic Seaboard could count upon what is assumed to be ever-increasing sales to other customers to fill the gap brought about by load diversion, no one can now doubt that the path to still higher gas sales is becoming steeper and harder. Transco appears to recognize this for as rich as its present markets are it does not seem to be sufficiently optimistic about them to keep it from attempting to invade the markets of Atlantic Seaboard and others.

Although Washington and Commonwealth have taken the position in the reopened PR rate proceeding that Atlantic Seaboard has no need for a PR rate schedule, they are aware of the fact that Transco's future sales are insured in at least two ways. First, by the fact that its customers must meet the 65 percent minimum CD load factor requirement of its tariff. Second, by its low unit cost due primarily to its high load factor operations. But Atlantic Seaboard has a far greater need for a floor under its low load factor operations and higher unit cost than Transco has for a floor under its operations.

In the Examiner's view, if Transco were authorized to serve Washington and Commonwealth, Atlantic Seaboard would be in urgent need not of an 80 percent PR rate schedule, but a 100 percent PR schedule. This case in fact leaves the Examiner somewhat aghast for, under the proposal here, the road Atlantic Seaboard would have to travel in the future would have to run through the cutting down of the prospects of the company that can least afford to bear the sacrifice. Atlantic Seaboard would truly face the prospect of business proliferation the end of which no one can now foretell, for the fewer sales it makes the higher its unit cost of gas will go and the greater the pressure it will put on its customers to desert to Transco.

The briefs of Transco and Commonwealth state, in effect, that load diversion is the subject of the PR proceedings which will be ultimately determinative

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inferences from them"; we must also exercise a "rational judgment" with respect to the problem and "determine from analysis of the total situation on which side of the controversy the public interest lies." *U.S.* v. *Detroit & Cleveland Navigation Co., supra,* 326 U.S. 236 at p. 241; *City of Pittsburgh* v. *F.P.C., supra,* 237 F. 2d 741 at p. 752. In fulfilling this function, inevitably "Forecasts as to the future are necessary to decision." *U.S.* v. *Detroit & Cleveland Navigation Co., ibid.,* p. 241. Nor does the exercise of our judgment as to the future necessitate the existence before us of a specific application pertaining to the future. *City of Pittsburgh, supra,* pp. 752–753. As far as affecting future certificate applications is concerned, in our opinion the grant of this application would throw open a Pandora's box full of serious difficulties having probably undesirable consequences for the public and the consumer. * * *

of the question. The Examiner does not agree. As counsel for the Columbia Companies point out in their reply briefs (p. 15), "In their PR Schedules Columbia Companies merely seek to incorporate minimum commodity provisions applicable to partial requirements customers. The Commission's decision in the PR case will be directed to the necessity and form of such minimum commodity bills. There is all the difference in the world in the issues involved in a case relating to minimum commodity obligation (PR) and a case passing upon the merits of the certification of a pipeline seeking to enter a market. In the latter, the issue is whether it is in the overall public interest that a second pipeline be certificated, which issue embraces the proposals of the parties (including load diversion plans, if any) viewed in the context of adequacy of service by the existing supplier. The problems are entirely different and far more fundamental than those involved in the pending PR proceeding. The PR schedule comes into play only *after* a Commission determination in the first instance that certification of a second pipeline is required by the public convenience and necessity."

Washington has not requested Atlantic Seaboard to provide it with any increased volumes beyond the 13,500 Mcf requested for the 1965–66 winter, and Commonwealth, while it needs additional gas, is not presently contemplating any increase in its present contract demand from Atlantic Seaboard. Although it cannot now be determined to what extent Atlantic Seaboard's rates will ultimately differ from Transco's, Washington, in its brief (p. 20), states: "It is an acknowledged fact that Transco's rates are lower than those of Seaboard. Transco's commodity rate under its CD rate schedules is 5¢ per Mcf lower than Seaboard's.[35] Transco's demand charge is somewhat higher than that of Seaboard but at all ranges of Washington's load factor of contract demand purchases from Transco, the over-all effect of both demand and commodity charges is to produce materially lower costs of gas purchased from Transco." Accepting *arguendo* the accuracy of this statement, and adding to it the fact that without a PR rate schedule Washington and Commonwealth could at any time confront Atlantic Seaboard with whatever deterioration in annual volumes that would be to their advantage, it requires no expertise to realize that Atlantic Seaboard's chances of supplying any additional requirements of either Washington or Commonwealth would be about nil unless it catered to whatever demands Washington and Commonwealth would make upon it. It would be an environment in which Washington and Commonwealth could effectively exploit the situation to their own advantage. The more they gathered special benefits for themselves the more Atlantic Seaboard and its other customers would suffer. Atlantic Seaboard should not be harnessed in such a situation. The Commission must make certain that Washington and Commonwealth act within the discipline of orderly and reasonably priced service for all of Atlantic Seaboard's customers, the effort being made to maintain reasonable opportunity for all, not greater prosperity for some.

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[35] As counsel for the Columbia Companies properly observe in their brief (p. 20, n. 36), "When a customer has entered into firm contracts with two suppliers, the demand charges are fixed and will not vary regardless of the volumes purchased. This means that the economic incentive will be for the customer to concentrate its purchases with that supplier having the lower commodity rate. As between Seaboard and Transco, we need hardly state that the customer's choice would be Transco. Thus, the incentive to divert load is there, regardless of the minimum level of purchases required to be maintained by the pipeline's minimum commodity bill (such as Transco's 65 per cent provision)."

### ATLANTIC SEABOARD FULFILLED ITS PUBLIC UTILITY OBLIGATIONS TO WASHINGTON AND COMMONWEALTH

Washington and Commonwealth claim that Atlantic Seaboard has not met their needs. This claim is made in the face of the fact that Atlantic Seaboard has never failed to supply them with their natural gas requirements (Tr. 5419C–5419D, 5784), and the further fact that its wholesale service, coupled with the ingenuity and operating methods of Washington and Commonwealth, sent the sales of all three soaring year after year—each succeeding year attaining a new all-time growth record.

The plain fact is that Atlantic Seaboard has not been a stranger to, nor has it ignored the needs of, Washington and Commonwealth. Furthermore, these customers have not been a stranger to Atlantic Seaboard's problems. All three recognized what the successful operation of their respective systems entailed, and they operated their systems in the light of the fundamental economics of the natural gas business, each making its necessary contribution in providing service to the public at the lowest cost. The end result has been that both Washington and Commonwealth have achieved enviable records of progress in their service areas and they can be expected to maintain that record for the foreseeable future whether or not served in part by Transco.

Washington's remarkable growth is dramatically illustrated by what has been accomplished. Washington's meters and gas revenues have risen perpendicularly year after year since it commenced taking gas from Atlantic Seaboard in 1931, its business being so prosperous that it found it desirable to branch out into areas of Virginia and Maryland, and to acquire subsidiaries operating in Maryland, Virginia and West Virginia. Its total gas revenues rose from $6,741,315 in 1931 to $88,794,458 in 1964 (Tr. 598, 8036). During the twelve months ended September 30, 1965, Washington had operating revenues of about $95,300,000, a gain of almost $6,000,000 over the preceding twelve months (Tr. 6277, 6326). This record is deserving of plaudits for both Washington and Atlantic Seaboard. It belies the idea that there has been something radically wrong with Atlantic Seaboard's past service to Washington.

Washington, however, does not identify its claim of Atlantic Seaboard's failure to meet its needs with its past prosperity, as indeed it cannot for the evidence all points the other way. Rather it takes an entirely different approach in seeking to establish, as the springboard for its whole position, that it turned to Transco only after storage or peaking service had been requested of, and rejected by, Atlantic Seaboard.

The emptiness of Washington's claim can best be pointed up by discussing it in two parts. The first relates to the period prior to November 26, 1963, the date on which Atlantic Seaboard filed its application to develop its Glady underground storage project. The second covers the period immediately following the Glady filing date, during which Washington and Commonwealth carried on hidden negotiations culminating in their commitments to purchase gas from Transco.

### *Period Prior To November 26, 1963*

Washington first relates its contention to the 1958 proceedings at Docket No. G–12059, *et al.*, wherein Washington sought peaking service from Transco (Tr. 613), suggesting that this is an indication of Washington's interest in storage service from Atlantic Seaboard (Tr. 5911–5912). Atlantic Seaboard's policy witness explained why Washington's participation in that case had no such meaning to Atlantic Seaboard, pointing out that Washington's primary interest therein was in the savings to be realized by Atlantic Seaboard and that "Washington became interested in a direct purchase from Transco when it became clear that certification to Seaboard would be denied" (Tr. 6160-6161).[36]

The fact that a wholesale customer may desire a storage service from another supplier represents no positive indication that such type of service is desired from the base supplier. Atlantic Seaboard's policy witness observed that Washington's interest in a peaking service from another pipeline may have been in conjunction with a desire that the rates of the base supplier (Atlantic Seaboard) be retained in their existing form (Tr. 7699). In this connection, it clearly appears that if Washington had been genuinely interested in a storage service, it would have pressed its point with Atlantic Seaboard subsequent to the proceedings at Docket No. G-12059, *et al.* It did not do so.

The testimony of Washington's witness that Washington "for several years, in informal conversations with Seaboard, has attempted to convince that company of Washington's critical need for a storage or winter service" (Tr. 613) is totally lacking in specifics; finds no corroboration in a search made of Atlantic Seaboard's files, nor in the memory of personnel in the Columbia System organization (Tr. 6155).

While Atlantic Seaboard had no underground storage facilities of its own in the 1950's, it was well aware of the fact that Washington had the key to its own load-balancing problem; that in addition to its local peak shaving facilities it set out to solve its problem by finding and thoroughly testing the Brandywine underground storage project in nearby Maryland. The Brandywine reservoir was regarded by Washington as being "perfectly adapted to underground gas storage." (*infra*, p. 190). What this underground storage reservoir meant to Washington is hereinafter set forth (*infra*, pp. 189-190).

Storage is expensive. If storage service is to be provided to one or less than all of a pipeline's customers, those who receive the service should pay the full cost thereof, otherwise those not needing or wanting such service would subsidize those who do (see *infra*, pp. 184-185). Accordingly, it would have been insufficient for Washington to have made an informal request for storage service. It would have had to go much further and, among other things, indicate not only that Atlantic Seaboard had a reservoir that could be developed as a storage project, but that it was prepared to pay the full cost thereof if it turned out to be the only customer of Atlantic Seaboard desiring such service. Under these circumstances, and in view of the fact that Washington believed it would be able to activate Brandywine in the late 1950's or early 1960's, its initial investment in that project being about $3,000,000, the Examiner is unable to perceive any need or real desire on Washington's part to have had storage or peaking service provided to it by Atlantic Seaboard. In short, even if it be assumed Washington had made an informal request for such service, there is no clear showing of need therefor.

Moreover, Washington could have instituted a complaint proceeding and obtained the necessary relief if it believed it could have justified its position, just as was done by the complainant in the *Shrewsbury* case (see *infra*, pp. 193-194).

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[36] Counsel for Atlantic Seaboard point out that "It is significant that the 1958 hearing at Docket No. G-12059, *et al.*, took place during the period of time that Columbia Companies were advocating in other proceedings before the Commission that the benefits of storage should be reflected in rates on a rolled-in cost basis. To our knowledge, at no time during these years did Washington ever suggest any disagreement with Columbia's position so advocated." (Brief, p. 42, n. 69).

*Period Following Glady Application*

Washington and Commonwealth gave their separate commitments to Transco for the purchase of contract demand (CD) and general storage service (GSS) following unannounced negotiations extending over several months. Those negotiations were carried on while Atlantic Seaboard's application for the development of its Glady storage project was being processed through the Commission (Tr. 7784). The purpose of Glady was to improve Atlantic Seaboard's gas purchase load factor from United Fuel, its major supplier, and meeting the increasing gas requirements of all of its customers, including Washington and Commonwealth, by the most economical and feasible method. A copy of the Glady application was sent to all of Atlantic Seaboard's customers at the time it was filed on November 26, 1963 (Item E, p. 2).

The evidence shows that on February 17, 1964, or two and a half months after the filing of the Glady application, Washington, without Atlantic Seaboard's knowledge, contacted Transco with reference to the matter of whether Transco could make contract demand and storage gas available to Washington. That and subsequent contacts led Transco to direct its representative to visit Washington and Commonwealth in the latter part of April 1964. The advance stage the negotiations between Washington, Commonwealth and Transco had reached at that time is clearly indicated, his testimony pointing out that he came "for the purpose of obtaining market data, flow diagram data, commitment letters, establishing meetings between the various departments to arrange for the location of delivery points, et cetera." (Tr. 4451)

On April 28, 1964, Washington filed an insincere Petition to Intervene in the Glady proceeding, that being only three days before the May 1st deadline date set forth in the Glady application of the issuance of a certificate to Atlantic Seaboard. That Petition raised no issue as to the merits of Glady but stated a desire on Washington's part to present evidence supporting the establishment by Atlantic Seaboard of a separate storage service and rate. Significantly, the Petition was silent as to the unannounced negotiations then being carried forward and in which both Washington and Commonwealth were expressing "strong desires" for purchasing gas from Transco (Tr. 472).

The filing of Washington's Petition to Intervene greatly puzzled Atlantic Seaboard, causing it to request a conference to explore Washington's position as set out in its Petition with the hope that Washington would be more specific in its proposal (Tr. 6156, Item E, p. 9).

The conference requested by Atlantic Seaboard was held on May 12, 1964, at a time when Atlantic Seaboard had still not been made aware of the active negotiations which were being carried on by Transco with Washington and Commonwealth. Concerning that conference, Atlantic Seaboard's policy witness testified, *inter alia* (Tr. 6156):

> * * * On May 12, 1964, other representatives of Seaboard and I met with the President and General Counsel of Washington * * * and other representatives of that company * * *.
>
> Washington advised that it did not object to the Glady storage project, but would not attempt to say at that time what the proposed storage rate should be. They stated that they wanted some kind of storage service rate similar to those offered by other Southwest pipelines. *We told* them that before such a rate could be developed all of our customers would have to be consulted. Washington stated that it was not its intention that Seaboard should file a storage service rate at that time, but only that in due time a storage rate should be filed with the FPC.

He further testified (Tr. 7752-53):

> * * * I think we even mentioned during our meeting with the Washington people that another pipeline that we had known of had taken as long as two years in which to confer with their customers, and finalize the winter service or storage service type rate schedule before it was finally filed.
>
> Of course, we could not or were not in a position to wait or hold up the Glady application for a period of time like that.
>
> * * * * * * *
>
> During the meeting we brought out the point that Seaboard had, of course, to recover its full cost of service, including our storage costs, and the separate storage service would result in higher CD rates when compared to what the CD rate would have been if the storage cost had been rolled in as part of Seaboard's overall cost of service.
>
> We also brought out the fact that before a storage service could be offered by Seaboard that all of the customers of Seaboard would have to be consulted in order to see if they were interested in such a rate schedule, which is exactly what we did do after we started in to this project.
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> * * * * * * *
>
> * * * [A]s my notes indicate, it was pointed out by Seaboard's representatives that sufficient time is necessary to explore this type of [storage] service; that we should have the time to discuss it with other customers and work it out, and to see if this could be done.

On May 22, 1964, or ten days after the conference held in Washington's offices, Atlantic Seaboard filed its answer to Washington's petition to intervene in which it stated in part—

> It appears that Washington is requesting a storage service—and is seeking to put itself in an unfair bargaining position to demand special considerations for its request. It is respectfully submitted that the public convenience and necessity does not permit Washington to use the administrative process as a means of coercion.
>
> Atlantic is faced with a critical emergency situation on its system. Delays in the Glady Project, as Washington knows or should know, threaten grave consequences.
>
> Atlantic stated in its application that it must have a permanent certificate * * * by May 1, 1964. The reasons * * * become more compelling each day * * *.
>
> If a permanent certificate is not received promptly, not only will the peak day volumes scheduled for withdrawal from Glady Field during the 1964–1965 winter heating season be seriously restricted but also the injection of natural gas during 1965 by the proposed new station will be precluded because of the required construction time element.
>
> * * * * * * *
>
> Washington's suggestion that the Commission should require Atlantic to render a storage service and to establish a storage service rate schedule raises an issue in this proceeding which Atlantic did not contemplate, and based upon precedent, could not expect.
>
> Atlantic has not requested in this proceeding authority to provide a storage or peaking service. As the Commission knows, Atlantic's storage operations are predicated on meeting the requirements of all existing wholesale customers by the use of the most efficient and economical means, including storage. The use of a storage schedule is neither consistent

> with Atlantic's operations nor the physical design of its pipeline system. See Opinion 373 (28 FPC 1145) and cf. order at 29 FPC 385, 386.
>
> * * * * * * *
>
> It is axiomatic that whether Atlantic has two rates (CD and Storage Service) or only one rate (CD) it will still be entitled to set the levels of such rates so as to recover its over-all cost of service. Washington's suggestion, however, implies that a separate storage rate would engender a different or more efficient use. Basically, since only the overall cost of service may be recovered by Atlantic, the introduction of a storage service schedule would merely shift costs as between customers, but certainly could not result in a different or more efficient use of Glady Storage.

On May 27, 1964, five days after Atlantic Seaboard filed its answer to Washington's petition to intervene, Washington withdrew from the Glady proceeding. A few days later, *i.e.*, June 10, 1964, Washington executed its commitment to purchase contract demand and storage gas from Transco.[27]

As a part of its case-in-chief, Washington offered in evidence, as Items D, E and F, its Petition to Intervene in the Glady proceeding, Atlantic Seaboard's Answer, and Washington's Notice of Withdrawal of its Petition to Intervene. The unannounced negotiations which Transco carried on with Washington and Commonwealth now shine through Washington's petition and its withdrawal notice (Items D and F). The Examiner finds that these two documents represent an unjustified effort on Washington's part to show that it turned to Transco only after unsuccessful efforts to obtain storage service from Atlantic Seaboard. Being nothing more than window dressing, they should not be permitted to influence the outcome of the instant proceeding in Washington's favor. They in fact make Washington's position in this proceeding suspect.[28]

It wasn't until the 58th day of the 65-day hearing that it developed on the record that Atlantic Seaboard was completely unaware of Transco's negotiations with Washington prior to the date Washington gave its commitment to Transco on June 10, 1964. As Atlantic Seaboard's policy witness testified (Tr. 7821–25):

> PRESIDING EXAMINER: * * * When did Seaboard or the Columbia Companies first become aware of the fact that Washington had been in contact with Transco with reference to obtaining gas from Transco?
>
> * * * * * * *
>
> THE WITNESS: To the best of my knowledge it was on June 10, 1964, the day that Washington sent its letter to Transco. We certainly did not

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[27] As Washington's witness put it in his direct testimony (Tr. 614):

> Under date of May 27, 1964, Washington filed a Notice of Withdrawal of its Petition to Intervene, saying, among other things, that because of Seaboard's opposition to rendering a storage service, Washington would seek other ways and means of achieving maximum economy in the supply of gas to its customers.
>
> Subsequently, Washington entered into a contract with Transco to purchase contract demand gas and general storage service. This contract * * * Washington supports in this proceeding.

[28] The Examiner recognizes that Washington's policy witness, who was not directly involved in the proceedings that transpired through July 10, 1964 (Tr. 6317), testified that Washington did not "know that a contract [which was a comparatively short letter] would be entered into" with Transco as late as May 27, 1964 (the date when Washington filed its notice of withdrawal of its petition in the Glady proceeding), it is abundantly clear from the testimony of Transco's witness that a commitment was to be entered into because, in the latter part of April 1964, he came to Washington "for the purpose of obtaining market data, flow diagram data, commitment letters, establishing meetings between the various departments to arrange for the location of delivery points, et cetera." (Tr. 4451)

> know about it on May 12 when we had the meeting [in Washington's offices]. We did not know about it when Washington withdrew their intervention, and it is my understanding * * * a representative of Washington called the president of Atlantic Seaboard and so informed him.
>
> * * * * * * *
>
> Presiding Examiner: * * * When did Seaboard or the Columbia Companies first become aware of the fact that Commonwealth had been in contact with Transco with reference to obtaining gas from Transco? * * *
>
> A. * * * I think the same situation * * * as soon as * * * Commonwealth entered into its agreement with Transco [on August 31, 1964], the Commonwealth official contacted the president of Atlantic Seaboard, and so informed him.[29]

It may be observed in passing that good communication and teamwork between a pipeline and its customers, rooted in trust and confidence, represents strength for all. As Atlantic Seaboard's policy witness testified at one point, "There has to be communication between two parties in order to get something done. * * * I think that * * * it is the duty of not only the supplying company but the buying company, regardless of who they are, to get together and communicate with one another in regard to" their problems (Tr. 7805–06).

Without communication and teamwork each party operates more or less in a vacuum and becomes preoccupied with its sphere of activity, the result being that instead of an organization united in the supply and distribution of natural gas, all that is likely to exist are isolated parts working in their own areas of interest without regard for one another.

### VALUE OF UNDERGROUND AND OTHER STORAGE FACILITIES TO LOW LOAD FACTOR OPERATIONS

Washington's service area is relatively unique. It differs from the usual large metropolitan market area in that Washington has a high saturation of residential space heating and little industrial activity. This means that while Washington is Atlantic Seaboard's largest customer it is at the same time one of its lowest (if not the lowest) load factor customers, there being little opportunity for Washington to level out its gas purchases from Atlantic Seaboard throughout the year through the sale of gas on an interruptible basis to industrials.[30] Accordingly, Washington's special problem has been to find the means of cutting down its peaks and filling in its deep valleys, thus keeping the unit cost of gas as low as possible.

The problem for which there is only one right solution is rare. The solving of a load-balancing problem like Washington's is no exception. It can be handled in at least one of three ways, or a combination of those ways, depending upon their availability and the choices made by the distributor: (1) Construction and operation of local peak shaving facilities. (2) Development of underground storage. (3) Purchase of storage service from supplier.

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[29] While Atlantic Seaboard was not aware of the actual negotiations which Commonwealth carried on with Transco, in a letter dated May 7, 1963, it had advised Commonwealth that it "would have no objection to your Company obtaining gas from Transco provided Commonwealth has entered into a service agreement under our PR Tariff." What Commonwealth now proposes to do in the way of load diversion is vastly different from what Atlantic Seaboard conceived it to be on May 7, 1963 (see *supra*, pp. 174–176).

[30] Interruptible customers are subject to having delivery of their supply interrupted or curtailed in favor of higher priority users (for which the interruptible customers are compensated through lower rates). Sales to interruptible customers are of great benefit to residential and commercial customers for they make possible sales to the latter at prices considerably lower than those which would otherwise have to be charged because the greater the volume of business, the less the cost to provide a single unit of service.

Interruptible customers normally use facilities capable of utilizing alternative fuels (coal or oil) during the temporary periods that gas must be diverted for higher priority use.

(1) ***Local Peak Shaving Facilities***

A distributor can alleviate its low load factor problem by developing, as Washington continues to do, a large capacity in local peak shaving facilities.[31]

Before discussing the second method by which a distributor without substantial interruptible sales may handle its load-balancing problem, it should be pointed out that no distributor served by Columbia System has recognized more clearly than Washington that distributors which should construct and operate peak shaving facilities may not always do so unless the necessary incentive is present. This is best illustrated by Washington's position in a 1956 rate form case involving two Columbia System pipelines. In that case the Commission approved their use of a contract demand (CD) rate form (15 FPC 700, aff'd on review by the Commission, 15 FPC 720, 16 FPC 711, and by the court, *Cincinnati Gas & Electric Co., et al.* v. *Federal Power Commission*, 246 F. 2d 688 (1957)). As the Examiner herein stated in his decision in that case (15 FPC at pp. 725–26):

> * * * The position set forth in Washington's brief is representative of the position of Baltimore and Commonwealth and * * * agrees with the position of United Fuel and Central Kentucky [Columbia pipeline companies]. * * * In this connection, it is of interest to point out that in 1950 Washington strongly opposed Commission approval of a CD rate form for Seaboard, but as a result of its operation under this rate form Washington has found that it has basic strength not only for itself but for the entire Columbia System and all companies served through the system.
>
> Washington's view is that the objectives of a CD rate form rest on a broader foundation than any one particular distributing company or pipeline company, and that such a rate form has a tendency to encourage customers to make realistic estimates and to shave off the peaks of their purchases, it having reconditioned and supplemented its own peak shaving facilities and used such standby facilities to level off the peaks of its purchases from Seaboard. It therefore asserts that the tendency of a CD rate to level off peaks causes more intensive use of its supplier's facilities, eliminating the waste of periodical idleness of such facilities, and resulting in the cost to the supplier per M. c. f. of gas sold to the distributing company being lower than it othewise would be, with every segment of the gas industry and ultimate consumers benefitting. But as counsel for Washington point out, "Peak shaving facilities will not be developed by distributing companies unless the rate structure affords ample savings to justify the investment such facilities entail." "It is * * * the contention of Washington that the over-all justification of the contract demand form of rate lies in its tendency to bring about the fullest and most economical use of all the pipeline facilities bringing gas from the Southwest. The compelling desirability of such full utilization is the end result; namely, the lowest reasonable cost of gas to the ultimate customer."

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[31] Washington's supply lines are looped through its system and connect with peak shaving facilities at Rockville, Maryland; Ravensworth, Virginia; East Station, D.C.; and with low pressure holding pumping station at Chilium, Maryland.

Washington believes, and there is every justification for its belief, that the CD rate form distributes the supplier's cost among customers in accordance with customer-responsibility therefor, and that unless the CD rate form is uniformly applied to all jurisdictional sales made by United Fuel and Central Kentucky, discrimination between jurisdictional customers cannot be avoided. It knows that since 1950 customers of Seaboard have met their share of the responsibility of reducing capital costs by providing stable revenues with the consequent beneficial effect on ultimate consumers. But as Washington's counsel state, "jurisdictional customers of other Columbia System companies, without the contract demand form of rate, have not performed their proportionate economic function. Revenues from these customers have been more variable. * * *"

(2) *Underground Storage*

A distributor may be able to establish its own underground storage in or near its service area, as Washington thought it would be able to do in the 1950's and which it is now in the process of doing. With underground storage, distributors may be able to take their maximum daily quantity during each day of the off-peak season, paying only the commodity charge of the tariff additionally, and inject the off-peak surplus gas into storage for withdrawal and use during the peak periods.

Washington had the key to its load-balancing problem and knew it. By its diligent efforts to develop and store gas underground in an acquifer formation in the vicinity of Brandywine, Maryland, in the 1950's—a fact Atlantic Seaboard and its affiliates were well aware (Tr. 6291), it set out to remedy its load-balancing problem, being unsuccessful in the 1950's only because of the failure of the General Assembly of Maryland to enact the necessary eminent domain legislation. However, the enabling legislation having recently been enacted, Washington is now in the process of obtaining the necessary State authority that will enable it to proceed with the development of Brandywine which is anticipated to be activated commencing with the 1969–1970 winter.[illegible] This storage project, because of its gas cost-cutting ability, will be of great benefit to Washington and its customers (see *infra*, pp. 207–208).

The importance of Brandywine in Washington's scheme of things is apparent from Washington's January 1959 local newspaper advertisement captioned: "UNDERGROUND GAS STORAGE FOR THIS AREA NEARING REALITY" (Ex. 121):

> In the interest of keeping the public fully informed on this important development * * * Washington * * * presents the facts concerning its underground gas storage project.
>
> The plan to store natural gas underground near Brandywine, Md., represents the biggest step forward in gas service since Washington became the first metropolitan community on the East Coast to use natural gas [supplied by Atlantic Seaboard]. This plan is close to actual fulfillment subject only to the approval of regulatory authorities and the acquisition of additional underground storage rights.
>
> * * * * * * *
>
> The underground gas storage project will make it possible for natural gas to be stored when customer use is low, and withdrawn later, when

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[illegible] According to the Washington Evening Star for August 25, 1966, the Public Service Commission of Maryland has completed its hearing on Washington's plan to store gas in Brandywine.

customer use is high. It will permit Washington * * * to purchase gas from its supplier [Atlantic Seaboard] at a relatively lower annual cost, thereby keeping down the price gas users must pay for gas. Let us explain:

> A good majority of our customers—more than 220,000—use gas for house heating. The weather consequently has a very important effect on our business. On an especially cold winter day, our customers require ten times as much gas as on a warm summer day.
>
> To be sure that our supplier has enough natural gas and adequate facilities to deliver large amounts when our customers need it on extremely cold days, the Company is required to pay a "demand charge" to our supplier. This demand charge, which is in addition to the unit cost we pay for the gas itself, has amounted to as much as 40 per cent of the yearly payment to our supplier. It has, therefore, a considerable influence on the rates we must charge our customers.
>
> With the ever-increasing number of gas customers in the area, it is inevitable that the demand charge will continue to get larger unless something is done to level out our daily purchases of gas from our supplier throughout the year. Clearly the way to accomplish this is through underground storage—the purchase of greater volumes of gas on warm days (when gas can be stored) and smaller volumes of gas on cold days (when gas is withdrawn from storage). This procedure will cut drastically the amount of the demand charge.
>
> Storage of gas in suitable underground formations has already proven successful in such cities as St. Louis and Chicago. Now Washington * * * has found a suitable location in the Brandywine area of Prince Georges County, to bring the benefits of this remarkable advance in gas service to the greater Washington area. Five years of research, exploration, and testing have gone into selecting this location. Many wells were drilled over an area of 16 square miles—some to a depth of 1,700 feet—and exhaustive studies were made of hundreds of earth samples. Actual "test runs" were conducted, in which 100 million cubic feet of inert gas were injected deep into the ground and then withdrawn under conditions which simulated those of natural gas storage. The results are conclusive: This reservoir is perfectly adapted to underground gas storage.
>
> * * * * * * *
>
> Passage of the eminent domain legislation by the Maryland Legislature will insure making the storage project a reality, bringing these lasting benefits to Prince Georges County, and safeguarding an adequate and economical supply of natural gas for the entire community of the Nation's Capital.

(3) *Purchase Of Storage Service, If Available, From Pipeline Supplier*

Underground and other storage facilities are not only valuable to a distributor like Washington, they are also valuable to a pipeline company like Atlantic Seaboard having low load factor customers like Washington. The idea is the same for both, except that the pipeline company has to consider a wide variety of distribution customers whereas the distribution company only has to think about its own operations.

Assuming the pipeline has underground storage facilities it can operate (which was not Atlantic Seaboard's situation, nor Transco's, until the 1960's), before the pipeline can inaugurate such service it must survey the needs of all of its customers for such service and determine which of its customers want and which do not want such service, for the substitution of one peak shaving service by a pipeline for individual peak shaving provided by a distributor or distributors would be worthwhile economy so long as the distributor-customers which do not want such service are not required to pay for it or to subsidize those who do want the service by contributing to its costs (see *supra*, pp. 184–185).

Pipelines develop storage in a number of ways, preferably at the delivery end of their systems as Transco has now been able to do. A contrast of the underlying reasons for the development of storage by the Columbia System and Atlantic Seaboard, on the one hand, and Transco on the other, will provide a clear understanding as to why they have developed underground storage for different reasons.

*Transco's Underground Storage*

As already pointed out (*supra*, pp. 167/168), over a period of several years the Commission directed Transco's efforts into the development of an underground storage program for the primary purpose of avoiding dissipation of natural gas reserves for inferior boiler fuel use. This was accomplished by Transco's transportation of gas during summer valley periods over most of the distance to market, storing gas in underground reservoirs near the end of its system, then later piping the gas, during the winter peak periods, the remainder of the way to larger centers of consumption. The peak facilities are then necessary only from the storage field to the consumption terminus.[illegible] On a system like Transco's Texas-to-New York system the savings can be considerable.

To use a concrete example, Transco in recent years has been storing gas which Consolidated Edison Company of New York, Inc. (Con Ed) would have used as boiler fuel in New York City. Transco has taken up to 4,550,000 Mcf of gas otherwise available to Con Ed as part of its permanent CD-3 daily entitlement of 228,722 Mcf, placed it in storage during the injection period, then delivered the same volume to Con Ed during the winter months at a rate not to exceed a maximum daily volume of 55,000 Mcf.

*Underground Storage of Columbia System and Atlantic Seaboard*

As has been shown (*supra*, pp. 182/187), Washington's attempt to give the impression that Atlantic Seaboard has been unmindful of Washington's problems as a low load factor distributor, denying to Washington the benefits of underground storage, is unwarranted.

Great effort has been made by the Columbia System through its storage operations to provide service to all customers at the lowest rates. A measure of this effort is shown by the fact that of 6,064,000 Mcf peak day sendout of the Columbia System on February 3, 1965, some 3,050,000 Mcf or over half thereof was provided out of underground storage. By virtue of these storage operations, Columbia Companies are able to convert customer purchases at low load factors to the high load factor purchase of gas from the Southwest, and the economies in operation thus achieved are undoubtedly enormous.

The true function of storage has been heretofore described by the Commission with reference to a contention made by Washington (31 FPC 1342, 1351):

> Washington Gas also contends that storage considerations do not justify any departure from rates based on Seaboard costs. It argues that capacity and gas for storage operations of Respondents and their high-load factor customers Ohio Fuel and Manufacturers is available only as a result

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[illegible] Transco's upstream customers, *i.e.*, those provided storage service before its storage fields are reached, are served through displacement.

> of the operations of low-load factor customers such as Washington Gas. Accordingly, it argues that Washington Gas deserves a "reward" for making possible storage operations that benefit other high-load factor customers, rather than a "penalty" in the form of high demand-low commodity rates which will shift such costs to the low-load factor customers.
>
> Washington Gas has misconceived the correct relationship of storage and low-load factor operations. Correctly stated, low-load factor operations make storage *necessary*, not possible. It is because of low-load factor operations that companies undertake storage at very substantial costs. The operation of storage facilities reduce the costs below what they would be if additional pipeline capacity equivalent to peak requirements were constructed.

As Washington's witness agreed, a pipeline company would not have need for storage facilities if all of its customers purchased at 100 percent load factor (Tr. 6372). As observed by the Commission, the low load factor customers of a pipeline, such as Washington, make underground storage operations necessary. Washington has always been a prime beneficiary of Columbia companies' storage.

The benefits of storage can be passed on to a pipeline's customers in one of two ways, *i.e.*, either through an overall reflection in the supplier's rates pursuant to treatment of storage on a rolled-in cost basis, or by providing a separate storage or winter service type of rate under the theory of storage cost segregation.

Until the recent filing of new tariffs by the Columbia Companies (see *infra*, pp. 197/198) the rates of Columbia Companies reflected the benefits of underground storage on a rolled-in cost basis. The rolled-in cost concept had the Commission's approval, it being shown that this approach was to the ultimate benefit of the Columbia System's customers. Concerning the Columbia Companies' historical position, the record reflects the following (Tr. 2754-55):

> * * * It has been the general philosophy of Seaboard and its affiliates that rates should be based on the theory of rolled-in costs. When gas first became available from the Southwest, Columbia Companies developed underground storage fields to enable them to purchase such gas on the most economical basis to meet the requirements of their low load factor markets. Their management has felt that storage costs and transmission costs should be rolled in and that rates should be designed which give all customers their pro rata benefit of low cost facilities, such as underground storage facilities. * * *

The above notwithstanding, the Commission has approved rates for other pipeline companies, including Transco, based on the use of a separate winter or storage service type of rate based on cost segregation. This is the approach now followed by Atlantic Seaboard and the other Columbia Companies in the filing of their new restructured tariffs in an effort to meet competition.

At the time Washington and Commonwealth entered into their commitments with Transco, Atlantic Seaboard had become deeply involved in a storage program of its own in which Washington and Commonwealth would have been major beneficiaries under the rolled-in cost concept. With the development of its Terra Alta and Glady underground storage projects, Atlantic Seaboard will be in a position to render storage or winter service to its customers if this is what the Commission now permits or requires.

In the Examiner's view, Atlantic Seaboard has reasonably supplied its customers, including Washington and Commonwealth, as fully as it should have. It is fully capable of doing so in the future.

*Federal Power Commission* v. *New England Power Co.,*
349 F. 2d 258

As support for their position, counsel for Washington rely in part upon what is commonly referred to as the *Shrewsbury* case in which the Examiner's decision (32 FPC 383), as modified, was affirmed by the Commission (32 FPC 373) and by the court (349 F. 2d 258).

In *Shrewsbury* New England Power Company (NEPCO) refused to sell power directly to the Town of Shrewsbury, Massachusetts on the same terms and conditions it was selling to other resale customers. NEPCO's action left the Town with no alternative but to continue purchasing power from NEPCO's affiliate, an unnecessary middleman, until relief could be obtained by Commission order. The Commission, by requiring direct service, enabled the Town to have the benefits of NEPCO's filed FPC rate which had been unlawfully denied to it.

The Examiner's decision in *Shrewsbury* pointed out that "The Commission's jurisdictional orbit is delineated by what is necessary and appropriate in the public interest" and that when "those needing assistance give the Commission better reasons for what ought to be done, than public utilities give for what is being done, the requested improvement in service should be ordered (32 FPC at 415). Washington argues that it has given "better reasons for what ought to be done". The Examiner does not agree.

Salient differences between the instant case and *Shrewsbury* can be pointed up by contrasting their important aspects.

*Shrewsbury* should be cited in connection with the instant proceeding, but for a reason either overlooked or ignored by Washington. What *Shrewsbury* demonstrates is that a party, believing that it has the facts and the law on its side, can obtain service to which it is entitled, and which a supplier is able to render, by filing a timely complaint. But as the Examiner pointed out to Washington's counsel during the hearing (Tr. 7704), in no prior proceeding has Washington ever taken "advantage of the opportunity it had to demonstrate to the Commission through evidence that the pipeline [Atlantic Seaboard] should do other than what it has done down through the years." Washington's failure to initiate and prove up its present position in a prior proceeding speaks louder than its unsupported allegation that Atlantic Seaboard has failed to meet its needs.

*Shrewsbury* held that the Town was entitled to be treated on a parity with other resale customers purchasing under NEPCO's wholesale rate; that all customers falling into the same class are entitled to the same rate and to receive the same kind of service under the same or similar conditions. Washington and Commonwealth have always purchased their requirements from Atlantic Seaboard under uniform rates approved by the Commission.

*Shrewsbury* involved, as did another case arising under the Natural Gas Act, *Kentucky Natural Gas Corp.* v. *Federal Power Commission*, 159 F. 2d 215 (1947), the elimination of an unnecessary middleman. Here there is no middleman to eliminate.

In *Shrewsbury* the supplier (NEPCO) to affiliated companies was not only protected against any present loss of business but it was evident that the Town's uptrend in requirements would cause NEPCO's sales to Shrewsbury to soar. It was a case in which the wider and greater services the Town sought "to provide its customers would increase NEPCO's sales to Shrewsbury over what they would otherwise be. Prosperity would breed prosperity." (32 FPC at 384). Here Atlantic Seaboard's sales to Washington and Commonwealth would admittedly decline on an annual basis and would otherwise be substantially less than what Atlantic Seaboard and the Columbia System thought they were going to be.

### CLAIM THAT THE CONTESTED WASHINGTON AND COMMONWEALTH LOADS REPRESENT A DETRIMENT TO COLUMBIA COMPANIES

Transco, Washington, Commonwealth and the Commission Staff contend that the contested Washington and Commonwealth loads represent a detriment to the Columbia Companies of about $1,000,000 in 1968. They base their contention upon the results shown in Transco's Exhibit No. 113 which undertakes, *inter alia*, to determine the incremental costs of service of Atlantic Seaboard, United Fuel and Columbia Gulf related to revenues to be received from the contested Washington and Commonwealth loads.[34] But as will be pointed out (*infra*, pp. 196/197), incremental cost and investment comparisons, even assuming they can be made accurately on the basis of initial assumptions and estimates, are meaningless for the purposes of a proceeding such as this because the companies involved must be regulated on the basis they exist and operate, *i.e.*, as separate corporate entities, and they cannot and do not sell gas on the basis of incremental cost. Rather their sales are made on the basis of uniform rates reflecting their total cost of service. This makes any attempted attribution of gas from particular sources to particular loads meaningless. What the future rates of Atlantic Seaboard, United Fuel and Columbia Gulf will be determined in another Commission proceeding now underway and in which the Commission will undoubtedly become deeply involved in order to enforce sound rate making principles designed to avoid deficiencies in revenue.

Transco's Exhibit No. 113 purports to demonstrate that there would be a revenue deficiency of $1,067,460 on an incremental cost basis, such deficiency being produced largely by virtue of the usage of Tennessee Gas Transmission Company's 100 percent load factor CD-3 rate of 33.57 cents per Mcf (at 14.73 psia) in pricing "Other Sources—Not Negotiated" gas attributed to the competitive loads.

While there is a basis in the Columbia Companies' direct presentation, and the cross-examination thereon, for reasonably concluding that the Columbia companies originally were thinking in terms of obtaining the "not negotiated" gas from Tennessee Gas Transmission Company at the 33.57 cent price utilized in Exhibit No. 113, it is likewise true that they lacked experience indicating how the gas would in fact be obtained, if required. If required, it may be assumed that the gas will be obtained from the most economical source whatever that source turns out to be at the time of need.

Rebuttal testimony was offered regarding United Fuel's 1965 summer experience, that representing United Fuel's first experience in respect to the acquisition of off peak other sources volumes (Tr. 6122). The purport of this testimony is that Appalachian production can be increased in the future to supply the "not negotiated" gas, if required. The testimony points out that United Fuel acquired 6.2 million Mcf of off peak gas out of the local Appalachian production and purchases and that this gas was acquired out of existing production fields and existing wells.

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[34] Counsel for Transco describe Exhibit No. 113 as follows (p. 75): "Exhibit 113 was prepared on two bases. As shown on Schedule 1, the revenues from the proposed WS service of Atlantic Seaboard were compared to the incremental costs required on the three Columbia System companies to render this service. This schedule shows, that in the year 1968, the cost of rendering this proposed all WS service to the competitive markets would exceed the revenues by over a million dollars. Thus, the competitive service on this basis would not be economically feasible. However, as shown on Schedule 2.0, if Atlantic Seaboard were to offer service to the competitive markets in accordance with the needs and desires of the two customers, the costs and revenues would be approximately in balance. In other words, on this basis, service to Washington and Commonwealth would be feasible."

Atlantic Seaboard offered surrebuttal testimony and accompanying Exhibit No. 123, taking into account United Fuel's 1965 experience, whereby a price of 14.52 cents per Mcf is now assigned to the "not negotiated" gas attributed to the competitive markets. The witness testified that the pricing of 14.52 cents per Mcf is now assigned to the "not negotiated" gas attributed to the competitive markets. The witness testified that the pricing of 14.52 cents per Mcf, instead of 33.57 cents per Mcf used in Exhibit No. 113, should be attached to the "not negotiated" gas, this being claimed to represent the average cost of production and local purchased gas experiences by United Fuel in 1965.[illegible] Using 14.52 cents per Mcf in place of the 33.57 cents per Mcf converts the revenue deficiency of $1,067,460 shown in Exhibit No. 113 to a revenue excess of $178,697. In their reply brief counsel for the Columbia Companies argue that other adjustments should be made in Exhibit No. 113 and that when and if made they reflect substantial excess revenues to be received from the contested loads.

Some idea of the extent to which Atlantic Seaboard and the Columbia Companies have been thrown off balance in their attempt to meet the requirements of a comparative hearing is clearly indicated by the foregoing discussion. They have no history of experience upon which to rely in support of their new tariffs. Moreover, time will be required for the working out of balanced tariffs. The Examiner has already pointed out a suggested revision that now needs to be made in Atlantic Seaboard's new tariff (*supra*, pp. 176–177).

Regarding Atlantic Seaboard's new tariff, Eighth Revised Volume No. 1, counsel for Transco assert that Transco is opposed to the "manner in which the new tariff * * * has been manipulated * * * in a desperate attempt to ward off competition from Transco." It seems appropriate to point out in this connection that in the face of Washington's and Commonwealth's commitments to Transco and the latter's lower rates capable of eroding Atlantic Seaboard's markets to an unascertainable extent, coupled with an absence of a Commission decision denying the carrying out of those commitments, Atlantic Seaboard could hardly be blamed for filing its new tariff in an effort to protect its interests as best it could.

Even though Atlantic Seaboard was operating under a recent Commission-approved tariff, the commitments Washington and Commonwealth made with Transco placed Atlantic Seaboard between the frying pan and the fire and, at the same time, created a situation which was apt to feed the fires of discontent among its other customers. Atlantic Seaboard was bound to fight, as any pipeline would, for the continued success of its gas business. To have expected it and the other Columbia pipeline companies to sit still under the circumstances would be like asking an athlete to try for second place when he believed he had to win, or like asking labor leaders to bargain for low wages.

The Commission, on the other hand, must make every effort to regulate pipelines on an economically sound basis and in the total public interest, not permit them to engage in competitive wars in the manner, for example, that savings and loan associations are engaged in their interest rate war with

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[illegible] Atlantic Seaboard's rebuttal evidence showed that, in 1964, Appalachian gas cost United Fuel an average of 22.73 cents per Mcf to purchase and 23.36 cents per Mcf from its own production (Tr. 6128–29).

commercial banks. Step by step these financial institutions have been raising rates of interest they will pay with the intent of luring savers into entrusting their money with them. Neither type of financial institution is all that eager to reward depositors for their virtues as savers, and neither considers it entirely prudent to pay the high interest rates they are paying, but they know they must have lendable funds, and as long as credit is tight they appear to have no other course but to pursue the one they are pursuing if they are to remain in business, that is until Congress rescues them by the enactment of appropriate legislation—as it now appears to be in the process of doing.

As for natural gas companies, Congress enacted the necessary legislation years ago under which the Commission may prevent what might become ruinous competition. It remains only for the Commission to enforce the Act within reasonable bounds. It is unthinkable that in the circumstances such as here present the standard solution will be to let two pipelines simply take dead aim at each other. That would represent an abdication of regulatory responsibility and undoubtedly would lead to chaotic conditions, the turmoil growing with time.

The future success of pipelines, to a large extent, rests in the hands of the Commission. Only through its practice of realistic regulatory policies can the future growth and development of pipelines be reasonably anticipated. Any fair and effective regulation will, of course, have to take into consideration tomorrow's problems and protect not only the consumer but also the investor.

### COMPARATIVE CONSIDERATIONS AND ESTIMATED SAVINGS TO WASHINGTON AND COMMONWEALTH

Comparative hearings are held for the purpose of enabling consideration to be given to all substantial factors (gas supply,[38] financiability, design of facilities economic feasibility, rates, etc.) entering into the determination of which applicant should be authorized to provide needed service in competitive areas. But it is one thing to consider these factors in relation to newly created companies proposing to construct systems, and quite another to consider them in the circumstances of this case involving well established pipelines with massive resources, know-how and proven ability. The competing companies here involved can, upon reasonable notice, supply large quantities of additional gas to existing and new customers far in excess of the Washington and Commonwealth requests for service from Transco, a fact which has been borne out by their annual and other construction programs.

Except for minor metering and connecting facilities, such as, for example, Transco would have to construct to serve Washington, pipelines such as Transco and Atlantic Seaboard do not construct special facilities to serve particular increased loads, rather they add additional facilities to their operating systems to the extent necessary to enable the system to supply all loads. In this process they cause individual projects to lose their separate identities by merging all costs, gas supply, operations, etc., into their overall operations. Having thus diffused these items among their total operations, they are then able to apply uniform rates of general applicability to all service rendered.

With the exception of the metering stations required by Transco to serve Washington, all of the system facilities required by both Transco and Atlantic Seaboard, to the extent proposed in their applications, have been or are in the process of being constructed pursuant to temporary certificates. This has enabled the facilities to be constructed without prejudice to the outcome of the competitive issue here for the reason that, irrespective of the decision on this issue, the system facilities involved will be used to provide increased service in the future even if that service does not include competitive loads.

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[38] The parties agree that the gas reserves committed to Transco and the Columbia System are adequate to permit them to serve the competitive loads.

Atlantic Seaboard owns and operates a pipeline some 330 miles in length, as compared with the 1,830 mile Transco system. Although Atlantic Seaboard is an operating segment of the Columbia System, and even though, as has been pointed out (*supra*, p. 170), the Columbia Gulf-United Fuel-Atlantic Seaboard interconnected systems represent the line of gas supply to Washington and Commonwealth, Atlantic Seaboard and the other Columbia Companies have to be considered and regulated as separated and affiliated companies, as pointed out in the *Shrewsbury* case (32 FPC at pp. 385–86). They were incorporated as, and exist as, separate corporations, have separate corporate contracts, buy and sell under separate rate schedules, keep separate books, and report separately to regulatory commissions. All costs of each Columbia Company are reflected in its rates.

Accordingly, since Atlantic Seaboard's rates are the end product of all costs of the connected Columbia Gulf-United Fuel-Atlantic Seaboard systems, it is Atlantic Seaboard's rates, etc., that must be compared with Transco's. However, as will presently be pointed out, a rate comparison cannot now be made with any degree of certainty. But such calculations as have been made by Washington and Commonwealth clearly indicate that Transco's rates are lower than those of Atlantic Seaboard.

As has already been indicated, the dollar savings to Washington and Commonwealth hardly scratch the surface of what is involved in this case and, in the Examiner's view, cannot be the controlling factor in its outcome no matter what the true magnitude of those savings would ultimately turn out to be.

While Transco would render service to Washington and Commonwealth under its long established tariff, Atlantic Seaboard's old tariff, Seventh Revised Volume No. 1 which was in effect at the time Washington and Commonwealth entered into their commitments with Transco, was superseded by Atlantic Seaboard's new restructured tariff, Eighth Revised Volume No. 1, filed in Docket No. RP65–49, that tariff being the end product of several months of consultations with Atlantic Seaboard's customers. Atlantic Seaboard and Washington are, however, still not in agreement as to what Washington's reduced contract demand should be. The new tariff was designed to enable Atlantic Seaboard to more nearly compete with Transco. A similar tariff was filed by Atlantic Seaboard's principal supplier and affiliate, United Fuel, in Docket No. RP66–2.[87]

The filing of Atlantic Seaboard's new tariff signified a thorough revision of the company's old rates which had at all times been under the constant scrutiny of the Commission and has been adjusted on several occasions.[88] The new tariff contains a much lower commodity charge and a higher demand charge than the old rates. The significant changes in addition to the restructuring of the demand and commodity components of the contract demand rate schedules include the inauguration of a new winter service (WS) rate, the elimination of the 10 percent billing demand leeway, and the elimination of a boiler fuel limitation. The changes have varying impact from customer to customer.[39]

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[87] Atlantic Seaboard and United Fuel were not the only Columbia Companies filing restructured tariffs. Similar tariffs were also filed by Kentucky Gas Transmission Corporation, The Ohio Fuel Gas Company, The Manufacturers Light and Heat Company, and Home Gas Company.

[88] In contrast, Transco's rates have never been the subject of a hearing and decision by the Commission (Tr. 4390–91). The Transco rates which the Commission has permitted to go into effect are the result of stipulated dollar settlements.

Atlantic Seaboard's new Eighth Revised Volume No. 1 was filed on March 31, 1965, was suspended for one day and was allowed to go into effect subject to refund on May 16, 1965 in Docket No. RP65–49. United Fuel's new tariff was made effective subject to refund on November 1, 1965, in Docket No. RP66–2.

The Commission hearing in which RP65–49 and RP66–2 are involved has not been completed. The issues in that proceeding include (1) whether the new form of rate structures for the two Columbia Companies will be allowed, (2) the relative amounts of initial contract demands (CDS) and winter service (WS) volumes which would be established, and (3) the level of the rates.

Turning now to a consideration of the estimated savings which it was anticipated would have accrued under Atlantic Seaboard's old tariff and those which, on the basis of present thinking, would accrue under the present provisions of the new Eighth Revised Volume No. 1.

*Estimated Savings To Commonwealth*

Commonwealth's Exhibit No. 73 used Atlantic Seaboard's old tariff, and its Exhibit No. 74 uses its new tariff as the basis for comparison in showing the estimated savings over the first three full years which Commonwealth anticipates would result from its contemplated purchases from Transco. The savings reflected in these two exhibits are:[40]

| Year | Exhibit No. 73 (old tariff) | Exhibit No. 74 (new tariff) |
|---|---|---|
| 1966 | $276,622 | $197,162 |
| 1967 | 502,412 | 357,511 |
| 1968 | 692,782 | 494,052 |

*Estimated Savings To Washington*

The savings Washington anticipated over the first three full years from its contemplated purchases from Transco under Atlantic Seaboard's old tariff are as follows (Ex. No. 78):

| *Year:* | *Estimated savings* |
|---|---|
| 1966 | $366,000 |
| 1967 | 829,000 |
| 1968 | 1,047,000 |

Before setting forth the calculated savings Washington presently thinks it might realize under Atlantic Seaboard's new tariff, it should be pointed out that with the inauguration of winter service (WS) thereunder, Atlantic Seaboard permitted some of its customers to transfer a portion of their preexisting contract demand to Rate Schedule WS. Washington was offered the opportunity to transfer 120,000 Mcfd of its then existing contract demand of 480,000 Mcf to WS service, leaving a contract demand of 360,000 Mcfd (Tr. 389, 2992). Washington, however, later nominated a contract demand of only 301,000 Mcfd[41] and a WS maximum daily quantity of 131,000 Mcf through October 31, 1965, increasing to 192,500 Mcf on November 1, 1965 (Tr. 2666).

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[39] As Atlantic Seaboard's policy witness testified (Tr. 2739): "We knew that Seaboard would realize certain economies through its additional [Terra Alta and Glady] storage, and as such would be in a position to restructure its tariff and offer more competitive rates. This we did through the winter service rate schedules and, of course, the restructuring of the CD rates."

[40] Both Commonwealth and Washington propose to pass their savings along to their customers. With the exception of one industrial sale, Commonwealth's customers are all wholesale customers (see *supra*, p. 170).

The question of the appropriate level of Washington's initial contract demand with Atlantic Seaboard will ultimately be resolved by the Commission in the proceedings at Docket No. RP65–49, *et al.* However, the results of Washington's present calculations (made on calendar year comparisons) as to what they would be on the basis of assuming initial contract demand levels of 301,000 Mcfd and 360,000 Mcfd are as follows (Ex. No. 91, Tr. 5901–3):[42]

| Year | 301,000 Mcfd | 360,000 Mcfd |
|---|---|---|
| 1965 | ($11,000) | $61,000 |
| 1966 | 199,000 | 51,000 |
| 1967 | 445,000 | 375,000 |
| 1968 | 545,000 | 413,000 |

The Examiner regards the results of the calculations made by Washington and Commonwealth as being superior to those made by Transco (Exhibit No.

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[41] Counsel for Atlantic Seaboard explain the situation as follows in their reply brief (pp. 17–18):

> In relation to Washington, the record shows that at the outset of the conferences Seaboard took the position that the initial CD level should be fixed at 400,500 Mcf and at a later point in the negotiations agreed to 360,000 Mcf (21/2944). During the latter stages of the conferences Washington several times indicated to Seaboard that an initial CD level of 360,000 Mcf appeared to be reasonable (21/2943–2944). In reliance thereon, Seaboard proceeded to prepare its new tariff filing on the basis of such initial CD level and also reflecting the agreed upon levels arrived at with its other customers. At the last minute, on March 23, 1965 (only a week before the filing date of the new tariff), Washington gave the first indication to Seaboard that a CD level below 360,000 Mcf might be desired (21/2949), but was unable to advise Seaboard of the lower level which it had in mind (21/2945). Considering the voluminous data required by the Commission's regulations in support of rate filings (already prepared by Seaboard on the basis of the 360,000 Mcf CD level which Washington had theretofore agreed was reasonable), it is clear that a protracted delay in the filing would have been occasioned if Seaboard had elected to wait until Washington figured out the extent and nature of its new demands.
>
> Seaboard proceeded with its filing on March 31, 1965, and by reference to the Commission's files at Docket No. RP65–49, *et al.*, the Examiner may ascertain the events that subsequently transpired. On April 19, 1965, Washington filed a protest to Seaboard's new tariff, opposing the filing in the strongest possible terms and suggesting that the new rates would occasion a rate increase rather than a rate decrease to Washington. Reacting immediately to Washington's expressed concern, some 10 days later, by letter dated April 28, 1965, Seaboard advised the Commission of a revision which it would undertake in an attempt to aid Washington, this being the modification of the billing demand provision in the WS Rate Schedule so as to incorporate the temporary ratchet referred to on page 35 of the Transco brief. A copy of Seaboard's April 28, 1965, letter is attached * * *. It may be observed that on page 3 of the letter Seaboard advised that the Commission may regard the proposed modification as a "firm commitment."
>
> It was not until May 24, 1965, that Washington made known to Seaboard its desire for an initial CD level of 301,000 Mcf. Washington's formal nomination was made on June 18, 1965 (44/5962). Seaboard thus was advised of Washington's desires in the premises only *after* a commitment had already been made in respect to the WS billing demand ratchet, a commitment made known to all of Seaboard's customers. We know the Examiner realizes that a firm commitment, once undertaken, is difficult to retract.

[42] Even greater savings than those shown above are reflected in Washington's Exhibit No. 92 but the Examiner agrees with Staff counsel that such savings are based upon a prepayment method that is not as acceptable as the cash method used in Exhibit 91.

112) and Atlantic Seaboard (Exhibit Nos. 51, 52 and 107 relating to Washington). Atlantic Seaboard's calculations relating to Commonwealth, contained in Exhibit Nos. 53 and 54, had to be rejected as evidence.

### REDUCTIONS IN COST OF GAS UNDER ATLANTIC SEABOARD'S NEW TARIFF

Counsel for the Columbia Companies include in their brief a summary comparison of the facts set forth in Commonwealth's Exhibits Nos. 73 and 74 (comparing the cost of gas to Commonwealth under Atlantic Seaboard's old and new tariffs (see *supra*, p. 198)) to show the impact of Atlantic Seaboard's revised tariff on Commonwealth. They point out (Brief, p. 33):

> * * * In contrast to the $1,471,816 accumulated three-year reduction in cost of gas reflected in Exhibit 73, Commonwealth's own exhibits in this proceeding disclose that Seaboard's new tariff on a full requirements basis will bring about savings to Commonwealth during the same three-year period, 1966–68, accumulating to $1,936,855, or about $465,000 in excess of the general level of savings Commonwealth initially anticipated. In other words, Seaboard's new tariff will generate for Commonwealth a reduction in its cost of gas far exceeding that which it originally planned.
>
> From the foregoing it is clear that the reductions in cost of gas attributable to the Transco supply reflected in Commonwealth's Exhibit 74 (which are shown to be reaching $494,052 in 1968) would be on top of the substantial savings to Commonwealth already brought about by Seaboard's new tariff. The dollar amounts reflected in Exhibit 74 may be said to represent additional but unanticipated short-term savings.
>
> We say short term for the reason that a good portion of the claimed savings portrayed in Exhibit 74 is made possible only by virtue of Commonwealth's plan to divert substantial volumes of Seaboard's historical load to Transco. * * *

Counsel for Commonwealth do not deny the accuracy of the foregoing comparison. Rather they treat it as a "novel approach" which "attempts to justify Commonwealth's remaining as a full requirements Seaboard customer on the ground that, while Commonwealth will admittedly receive benefits by going to Transco even under Seaboard's restructured rates, these benefits will not be as great as they were expected to be at the time Commonwealth's commitment to Transco was entered into." Commonwealth's counsel properly point out that the restructured "rates are not final in any sense, having been suspended and set for hearing by the Commission."

With reference to Washington, the brief of counsel for the Columbia Companies recites (p. 45):

> Appendix B attached hereto reflects the savings accorded Washington by Seaboard's new tariff based on an initial contract demand level of 360,000 Mcf, comparing Washington's Exhibit 78 and the data supplied by [Washington's witness] at 43/5901–5903. In contrast to the $2,242,000 accumulated three-year reduction in cost of gas reflected in Exhibit 78, Washington's own figures show that Seaboard's new tariff on a full requirements basis will occasion economies to Washington over the same three-year period, 1966–1968, totalling $2,506,000, or $264,000 in excess of the savings Washington originally anticipated.[75]

[75] Appendix B also reflects savings occasioned by Seaboard's new tariff in 1965 of $259,000, which produces a four-year total, 1965–1968, of $2,765,000. For the months of November and December, 1965, Washington anticipated savings resulting from the Transco supply of $33,000, and total accumulated savings, November, 1965, through 1968, of $2,275,000.

Appendix C presents corresponding information on the basis of an initial contract demand level of 301,000 Mcf. In this instance, the savings to Washington over the three-year period, 1966–1968, which would be occasioned by Seaboard's new tariff would amount to $2,684,000, or $178,000 in excess of the savings which would accrue to Washington based upon an initial contract demand of 360,000 Mcf.[76]

[76] Appendix C also shows that inclusion of the year 1965 in the picture would produce a four-year total savings based upon an initial contract demand of 301,000 Mcf of $3,372,000.

The foregoing discloses that whether Washington's initial contract demand level is ultimately fixed at 360,000 Mcf or 301,000 Mcf, Seaboard's new tariff will provide reductions in cost of gas considerably exceeding that which Washington initially conceived.[77] * * *

[77] We have noted earlier that Washington has opposed Seaboard's new tariff. Of course, any success Washington may have at Docket No. RP65–49, *et al.*, in achieving revision of the structure of the rates contained in Seaboard's new tariff would necessarily increase Washington's savings thereunder, albeit at the expense of Seaboard's other customers.

### BENEFITS CLAIMED BY COMMONWEALTH AND WASHINGTON IN ADDITION TO THE SAVINGS IN THE COST OF GAS

Commonwealth and Washington claim that other benefits, in addition to the contemplated savings in the cost of gas, will be derived from Transco's supply of gas. However, none of these claimed benefits justify certification of the Transco supply.

Before discussing the additional benefits referred to, consideration will be given to two points raised by Washington and Commonwealth. They say (1) that they desire to be released from the "captive bonds" of Atlantic Seaboard, and (2) that they have received very valuable concessions from Atlantic Seaboard resulting from the presence of Transco's competition.

As to the desire of Washington and Commonwealth to be released from Atlantic Seaboard's "captive bonds", it should be noted: First, Washington and Commonwealth have enjoyed a highly profitable captivity (see *supra*, p. 182). Second, it appears that Washington and Commonwealth have necessarily been "captives" of Atlantic Seaboard as no other rival has appeared on the scene offering to supply the low load factor business Atlantic Seaboard had to carry on. While Atlantic Seaboard cannot now escape from what it has had to be, its investments and business can nevertheless be protected by the Commission (see *supra*, pp. 196–197). Third, insofar as incremental supplies of gas are concerned, it appears that Washington and Commonwealth now desire to become "captive" customers of Transco for it is unlikely that Atlantic Seaboard could ever compete with Transco rate-wise.

As to the concessions or benefits claimed to have been realized from the presence of Transco's potential competition, counsel for Washington and Commonwealth ignore the fact that where competition, rather than prior demonstrated merit, produce results they desire, the satisfied desires would seem to lack a sound basis in fact for otherwise the desires would have been satisfied long ago in Commission proceeding on the basis of their merit.

What is needed in a proceeding such as this is not a recital of complaints, but proof that the complaints are justified. It seems safe to observe that there has never been a pipeline or distributor as to which perfection has marked its every move. Moreover, in view of the phenomenal growth experienced in the natural gas business, the surprising thing is not that there have been complaints, but that the complaints have been so few—some unjustified.

### *Additional Benefits Claimed by Commonwealth*

In addition to considerations relating to the cost of gas, Commonwealth cites four reasons in justification for a supply of gas from Transco: (1) An "alternative supply in the event of emergencies"; (2) Variety of types of services; (3) Threatened competition from other fuels and other pipelines; (4) Conditions of service.

(1) Commonwealth already has the protection of a Transco supply in the event of emergencies by reason of the fact that Transco's system is interconnected with Commonwealth's main line, such interconnection being capable of handling Commonwealth's entire natural gas requirements (see *supra*, p. 170). Moreover, there are four direct interconnections between the Transco and the Atlantic Seaboard systems (*supra*, p. 170) which lend added assurance to Commonwealth by virtue of displacement (Tr. 271–72). The Commission has authorized each of the five interconnections referred to for use of the emergency exchange of gas (Tr. 408). Accordingly, Commonwealth, Washington and all other customers of Atlantic Seaboard already have the assurance of a second source of pipeline supply in times of emergency.

(2) Concerning the variety of services that Transco has to offer, it may be observed that presently Transco proposes to service Commonwealth with two types, namely, CD and GSS, and Atlantic Seaboard is capable of providing the same types. Moreover, in connection with the development of Atlantic Seaboard's new tariff, Commonwealth was requested from time to time to advise Atlantic Seaboard of such ideas it might have with respect to desired rate changes or types of schedules which Commonwealth would like to see incorporated in the new tariff (Tr. 5463–65). It has been Atlantic Seaboard's desire to do what it can to develop a tariff incorporating to the maximum extent possible the changes desired by its customers (Tr. 5465–66). There is every indication that if Commonwealth will make known its desires they will be considered by Atlantic Seaboard and provided to the extent shown to be reasonable.

(3) The testimony of Commonwealth's witness concerning threatened competition from other fuels and other pipelines appear to have relation to the situation which existed at the time when Atlantic Seaboard's old tariff was in effect. Moreover, as to the pipelines projected into Commonwealth's market area, such proposals were under consideration in prior years and nothing substantial appears to have transpired recently to indicate that the proposals are still active (Tr. 5448–49). Present day economics would, of course, have to be applied to any future pipeline projected into Commonwealth's area.

While it is true that a company's competitive position is enhanced as its rates are lowered, there is every reason to believe that Atlantic Seaboard's future rates, whatever they turn out to be, will aid Commonwealth in its competition with others. There is no warrant in the record for believing that Commonwealth is presently in a dangerous competitive position. Furthermore, the competitive needs of Atlantic Seaboard as well as those of Commonwealth must be considered in deciding this case.

(4) The final reason for Commonwealth desiring service from Transco relates to "conditions of service", two factors being enumerated: (a) the benefits to be derived from the higher pressure at which Transco would be delivered (in comparison to the historical pressure of Atlantic Seaboard's deliveries for which Commonwealth in the past paid a facility charge for pres-

sures in excess of 425 pounds) (Tr. 592–93, 537–38), and (b) fluctuations in the Btu content of Atlantic Seaboard's gas (Tr. 590–92).

As to the pressure conditions, changes operating to Commonwealth's distinct advantage are forthcoming as the result of Atlantic Seaboard's 20-inch line replacement program which was initiated as a result of a study made in 1961. As the 1,000 pound replacement line is installed, the pressures available to Commonwealth will increase, and the further justification for the facility charge heretofore paid by Commonwealth for pressures in excess of 425 psig, which it was proper for Commonwealth to pay, will disappear.

As to the fluctuations in the Btu content of Atlantic Seaboard's gas, the record shows that Atlantic Seaboard never had any control over the fluctuations in the Btu of its gas. The propane extraction plant involved is owned and operated by Kentucky Hydrocarbon Company, a subsidiary of Kentucky West Virginia Gas Company, which, in turn, is a member of the Equitable Gas System. Kentucky Hydrocarbon is not an affiliate of Atlantic Seaboard or any other Columbia Company.

The fluctuations in the Btu content of Atlantic Seaboard's gas have been negligible since August 1964. Prior thereto they were caused by the variations in the level of the extraction operations of Kentucky Hydrocarbon Company.

Because of the change in Kentucky Hydrocarbon Company's operations, it now appears assured that fluctuation in the Btu content of the gas delivered to Commonwealth will be negligible in the future. Moreover, the connection of Atlantic Seaboard's replaced 20-inch system with United Fuel's southwest gas supply (estimated for completion in 1970) means that thereafter all or a major portion of United Fuel's deliveries to Atlantic Seaboard through the 20-inch system will be southwest gas having a constant Btu value (Tr. 6101).

### *Additional Benefits Claimed by Washington*

Washington claims that the purchase of gas from Transco will, in addition to savings in the cost of gas purchased, provide (1) additional assurance of continuity of service in the case of line breaks or other emergency situations; (2) economies resulting from Transco's higher delivery pressure (Tr. 617).

As to continuity of service, two of the four direct interconnections between Atlantic Seaboard and Transco are in the immediate vicinity of Washington's service area, one being at Dranesville, Virginia (a few miles west of Washington), and the other at Rockville, Maryland (a few miles north of Washington) (Tr. 270–71). Considering these interconnections, and the benefits to be derived from the other two interconnections by virtue of displacement, it could hardly be said that certification of Transco would add any measurable additional assurance of service continuity to Washington. Furthermore, commencing with the 1969–1970 winter season, when the Brandywine project is expected to be in operation, Washington will have an additional source of supply to greatly enhance the reliability of its service.

Concerning pressure, Transco's proposal involves two Virginia delivery points, *i.e.*, at Herndon and Bull Run. Washington will not be in a position to take gas from Transco at Herndon at pressures higher than those now provided by Atlantic Seaboard (Atlantic Seaboard's Dranesville delivery point being in the same area) (Tr. 5694–95). The higher Transco pressure would be at Bull Run and would not be available until the 1967–68 winter season (Tr. 5691–94), which coincides with Washington's estimate as to when its proposed new pipeline running from Bull Run to a point on the Potomac River south of Woodbridge, Virginia, would be completed (Tr. 609). Atlantic Seaboard's 20-inch system, when replaced, will provide Washington with pressures at Bull Run in excess of that of the Transco gas (Tr. 6100).

### CLAIM THAT LOSS OF LOADS BY ATLANTIC SEABOARD SHOULD BE EVALUATED IN THE LIGHT OF SALES OF THE ENTIRE COLUMBIA SYSTEM

Staff counsel are in error in contending that the impact of Atlantic Seaboard's loss of the Washington and Commonwealth loads should be measured in terms of the Columbia System as a whole rather than Atlantic Seaboard alone. While the fact that the Columbia affiliates are controlled by a common parent may signify the existence of a situation in which the Commission, in order to protect the public interest, might be required in certain instances to give the most careful scrutiny and responsible reaction (*Cf. Mississippi River Fuel Corp.* v. *Federal Power Commission*, 252 F. 2d 619, 621–23), there is no justification for either requiring or expecting one affiliate to take up the slack in the operations of another, or regarding the losses of one in the light of the operations of all. Ultimate consumers in the States of Kentucky, West Virginia, Ohio, Pennsylvania and New York would not, of course, be appreciative of the fact that they had to make up Atlantic Seaboard's losses.

As pointed out (*supra*, p. 197), the Commission must deal with the corporate setup as it exists. Each Columbia affiliate has its own costs, problems and burdens and each is entitled to earn a reasonable return on only its investment. There can be no question but that the direct effects of the loss of the contested loads would fall upon Atlantic Seaboard, its customers, and upon the ultimate consumers they serve.

### ROLE OF COMPETITION IN THE REGULATED NATURAL GAS INDUSTRY

It is settled law that the Commission may, where the conditions warrant, authorize service by a second supplier to an area already served by another pipeline under prior certificates, *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881, cert. den. 335 U.S. 854 (1948); *Kentucky Natural Gas Corp.* v. *Federal Power Commission*, 159 F. 2d 215 (1947); *Home Gas Co.* v. *Federal Power Commission*, 231 F. 2d 253, cert. den. 352 U.S. 831 (1956). In the *Panhandle Eastern* case the Court delivered what has become the classic exposition of the role of competition in the regulated natural gas industry:

> * * * Detroit and Ann Arbor are not the only markets involved. The Commission rightly took into account the interests of other communities now served by Panhandle and of still others that will be served by Michigan-Wisconsin. Even apart from such interests, nothing in the Natural Gas Act suggests that Congress thought monopoly better than competition or one source of supply better than two, or intended for any reason to give an existing supplier of natural gas for distribution in a particular community the privilege of furnishing an increased supply. * * * (169 F. 2d at 883–84)

The Commission's policy is to—

> protect the existing supplier from possible severe and unjustifiable harm resulting from the certification of an additional supplier, by requiring that a positive and convincing showing must be made to support the certification of such additional supplier. (21 FPC 399, 404)

It is clear that Transco's proposal to serve Washington and Commonwealth must be denied because of the "possible severe and unjustifiable harm" which could result to Atlantic Seaboard and the Columbia System. The loss of sales presently contemplated in the Washington and Commonwealth commitments to Transco, and the great turmoil and disruption that those commitments have already created for Atlantic Seaboard and its affiliates, could represent only a glimpse of what lies ahead insofar as a deterioration of Atlantic Seaboard's business is concerned. It can reasonably be anticipated, because of Transco's cream-skimming ability and lower cost of service, that Atlantic Seaboard's customers in addition to Washington and Commonwealth would gravitate to Transco's service. Furthermore it is highly doubtful if Atlantic Seaboard would be able to even maintain the current level of its present contracts with its customers, mention having already been made of the fact that some 116,250 Mcf of Commonwealth's present contract demand with Atlantic Seaboard of 171,800 Mcf expires on November 30, 1970 (*supra*, pp. 174–175).

In the Examiner's view, Transco's presence in Atlantic Seaboard's markets, in a capacity other than as a wholesaler to Atlantic Seaboard, could more properly be regarded as usurpation of business rather than competition for business. For this and other reasons Transco does not propose to compete with Atlantic Seaboard in a manner which will promote the overall public interest. Moreover, the intention of Washington and Commonwealth to reduce substantially their historical takes from Atlantic Seaboard would enable Transco, Washington and Commonwealth to partially live off Atlantic Seaboard and its other customers, and they would be living better than they have a right to live.

There would, of course, be no objection to Transco buying out all or a part of Atlantic Seaboard's business if Atlantic Seaboard desired to sell. And it may also be pointed out that the Interstate Commerce Commission has in the past helped out weak railroads by preventing needed revenue from passing to prosperous ones, the purpose being to enable the whole transportation system to be maintained without raising unduly any rate on any line (*New England Divisions Case*, 261 U.S. 184).[43] But the reverse is sought here. Transco would now take over part of Atlantic Seaboard's business, and would place itself in a position to take over still more business, without a buy out. If permitted, the situation will enable the strong to become stronger. The weak weaker. In view of the purpose of the Act to prevent preference and discrimination, and to maintain a healthy industry, it must be assumed that Congress did not intend for this to happen.

Pertinent here is the Commission's decision in *Texas Eastern Transmission Company*, 14 FPC 116, 120 (1955):

> This is not to say there may not be cases in the future, as there have been in the past, in which our policy of balancing the interests involved in achieving the result most consonant with the public interest will not require that we direct a second natural gas company to supply part of the requirements of the distribution company. In instances where the first natural gas company is unable to render satisfactory service in that it is unable to provide the distribution company a second physical source of supply, important operating flexibility, added safety in operation, or when there are other important considerations, it may be necessary for us to direct a second natural gas company to render service to provide such advantages.
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> * * * * *
>
> The only advantage to which UGI can point as a reason for ordering Texas Eastern to serve part of its requirements is a relatively small saving

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[43] There is another method that is occasionally used, particularly in maintaining the financial integrity of transit systems. It is to grant a direct public subsidy to avoid endangering the efficiency of the company involved. No such course can be taken insofar as pipelines are concerned, but they can be regulated in a manner best calculated to produce the desired result in the total public interest.

> in purchased gas costs. This saving is achieved, not because Texas Eastern can sell gas more cheaply at the existing load factor, but only through the insertion of Texas Eastern as a base load supplier of UGI, leaving Manufacturers with the responsibility of supplying not only a large portion of the base load but all the peaks as well. It is only through this device that UGI can show any advantage from service directly from Texas Eastern. *Absent other considerations, it is not in the public interest to direct a second natural gas company to render base load service to a distribution company.* [Emphasis supplied]

The Commission further pointed out (14 FPC at p. 121):

> * * * If a buyer operating an integrated distribution system should not be permitted to manipulate its takes under two firm rate schedules from one seller, by the same token, a buyer operating an integrated distribution system should not be permitted, without good cause, to manipulate its takes under two firm rate schedules from two sellers requiring one seller to absorb all the swings in the buyer's load.

The principles set forth in the following excerpts from other decided cases are also pertinent.

*United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 660:

> * * * Once the Commission grants authorization to construct facilities or to transport gas in interstate commerce, once the distributing contracts are made, a particular market is withdrawn from competition. *The competition then is for the new increments of demand that may emerge with an expanding population and with an expanding industrial or household use of gas.* [Emphasis in original]

*Natural Gas Pipeline Company of America, et al.*, Commission Opinion No. 474, issued September 9, 1965 (34 FPC 771, pp. 778; 784):

> * * * Competition is not an end in itself and Oklahoma Illinois cannot surmount its other defects merely because in the abstract, competition may be useful in the St. Louis market. In all of the other situations in which we have certificated a second pipeline to serve a major consuming area, it has been in circumstances in which the new competition *by focusing on new customers and growth in demand of old customers* has been able to provide the competitive spur without the serious immediate impact on the existing pipeline necessitated by a grant of the Oklahoma Illinois proposal. * * * [Emphasis supplied]
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> * * * * * * *
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> The fact that Mississippi has a monopoly over the pipeline service into the St. Louis area is not decisive in our evaluation of its project. In the field of public utility regulation, and particularly where so-called "natural monopolies" are concerned, it is recognized that a monopoly will serve to eliminate duplication of facilities and may thus reduce costs to the rate payer; on such situations, regulation rather than competition is relied upon to protect the public from possible exploitation. Nevertheless, the impact of a monopoly on the competitive situation is a factor we should not ignore in passing on certificate applications, cf., *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741 (CADC–1959).

*Federal Communications Commission* v. *RCA Communications*, 346 U.S. 86, 91–92, 96–97 (1953):

> That there is a national policy favoring competition cannot be maintained today without careful qualification. It is only in a blunt, undiscriminating sense that we speak of competition as an ultimate good. Certainly even in those areas of economic activity where the play of private forces has been subjected only to the negative prohibitions of the

> Sherman Law, * * * this Court has not held that competition is an absolute. * * *
>
> Prohibitory legislation like the Sherman Law, defining the area within which "competition" may have full play, of course loses its effectiveness as the practical limitations increase; as such considerations severely limit the number of separate enterprises that can efficiently, or conveniently, exist, the need for careful qualification of the scope of competition becomes manifest. Surely it cannot be said in these situations that competition is of itself a national policy. To do so would disregard not only those areas of economic activity so long committed to government monopoly as no longer to be thought open to competition, such as the post office * * * and those areas, loosely spoken of as natural monopolies or—more broadly—public utilities, in which active regulation has been found necessary to compensate for the inability of competition to provide adequate regulation * * *
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> * * * * * * *
>
> * * * In the nature of things, the possible benefits of competition do not lend themselves to detailed forecast, cf. *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344, 348, 73 S.Ct. 287, 289, but the Commission must at least warrant, as it were, that competition would serve some beneficial purpose such as maintaining good service and improving it. Although we think RCAC's contention that an applicant must demonstrate tangible benefits is asking too much, it is not too much to ask that there be ground for reasonable expectation that competition may have some beneficial effect. Merely to assume that competition is bound to be of advantage, in an industry so regulated and so largely closed as is this one, is not enough.

Atlantic Seaboard has supplied the natural gas requirements of its customers, including Washington and Commonwealth, as fully as it should have and is capable of continuing to do so. Moreover, the only advantage accruing to Washington and Commonwealth as a result of a Transco supply is savings in the cost of gas. Such savings, however, are not only far outweighed by the countervailing considerations discussed in this decision, but it may very well be that, on a full requirements basis, the cost of gas under Atlantic Seaboard's new tariff will bring about reductions in the cost of gas somewhat similar to the savings Washington and Commonwealth originally planned in connection with their purchase of gas from Transco (see *supra*, pp. 200/201) In any event, whatever difference there would be on a full requirements basis would be infinitesimal when reflected in savings to individual consumers.

In the case of Washington, its Brandywine storage project will result in economies which will be truly substantial. Brandywine will be activated commencing with the 1969–1970 winter season. Based upon original development plans calling for deliverability of 300,000 Mcf per day (Tr. 6001), a study made in late 1958 revealed that Brandywine would produce a net reduction in Washington's cost of service of $1,623,000 in 1963 and $2,162,000 in 1964 (Tr. 6330). Washington's current plans call for a somewhat smaller project having deliverability of 100,000 Mcf per day (Tr. 5847), but even at this restricted level the economies remain significant. Based upon the year 1969, Washington estimated that the cost of service relating to Brandywine would be $1,600,000; the cost of comparable storage or winter service from a pipeline would be $2,500,000, or a savings from Brandywine of $900,000 (Tr. 6361–6363).

While the record does not show the extent to which Brandywine will ultimately be developed, there appears to be no reason why, from an engineering standpoint, it cannot be developed to at least the originally proposed development of 300,000 Mcf of daily deliverability. It is a reservoir "perfectly adapted to underground storage" (see *supra*, p. 190). In any event there is no question but that Atlantic Seaboard's WS rate, in combination with the Brandywine project, assures Washington of adequate storage supplies for several years to come.[44]

### AUTHORIZATIONS GRANTED BY EXAMINER'S DECISION ISSUED JUNE 13, 1966 IN DOCKET NOS. CP65-122 AND CP65-181

Insofar as Atlantic Seaboard's application in Docket No. CP65-122 is concerned, the Examiner's decision and order issued June 13, 1966 grants a permanent certificate for the construction and operation of all facilities and for all sales of natural gas proposed therein except the additional services proposed for Washington (no additional service being sought by Commonwealth from Atlantic Seaboard).

As to Transco's application in Docket No. CP65-181, the Examiner's decision and order issued June 13, 1966, intended to grant a permanent certificate for all sales and services proposed by Transco therein except (1) the proposed substitute service to Consolidated Edison Company of New York, Inc., which the Commission severed for further hearing commencing October 4, 1966, and (2) the proposed sales and service to Washington and Commonwealth. It was further the intent of that decision and order to grant a permanent certificate for all of the facilities Transco proposed to construct and operate except (1) the "Tryon" extension facilities eliminated by request from Docket No. CP65-181 and included in Transco's application at Docket No. CP66-150, the authorizations sought in that proceeding having been the subject of an Examiner's decision and order issued August 22, 1966, and (2) the connecting and metering station facilities required to serve Washington (no similar additional facilities being required in connection with Transco's proposed sale of gas to Commonwealth).

### ADDITIONAL FINDINGS AND CONCLUSIONS

(1) The proposal of Transco to render service to Washington and Commonwealth, and to construct connecting and metering facilities to serve Washington, is not in the public interest and should be denied.

(2) The proposal of Atlantic Seaboard to render additional service to Washington as set forth in its application at Docket No. CP65-122 is in the public interest and should be granted.

(3) To the extent that Washington and Commonwealth request additional service from Atlantic Seaboard it, and its affiliates, should take such action as will enable them to meet those requests as promptly as possible under their effective rate schedules.

### ORDER

WHEREFORE, *It Is Ordered*, subject to review by the Commission:

(A) The application at Docket No. CP65-181 be and the same is hereby denied insofar as the same relates to the proposed service to Washington and Commonwealth.

(B) A certificate of public convenience and necessity be and the same is hereby issued to Atlantic Seaboard in Docket No. CP65-122 to provide the additional service proposed therein to Washington.

FRANCIS L. HALL,
*Presiding Examiner.*

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[44] During the 1967-68 winter season Atlantic Seaboard will have a peak deliverability from storage of 503,600 Mcf, or an excess storage deliverability of 130,100 Mcf (Tr. 8129).

## OPINION NO. 513

## CITY OF HAMILTON, OHIO, DOCKET NO. CP65-402; TEXAS GAS TRANSMISSION CORPORATION, CP66-13; THE OHIO FUEL GAS COMPANY, CP66-207

### OPINION AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DIRECTING NATURAL GAS SERVICE

(Issued January 24, 1967)*

### *Syllabus*

1. Certification of Texas Gas as Hamilton's future supplier is in the public interest and loss of the Hamilton load will not impair ability of Cincinnati Gas, Ohio Fuel and Kentucky Gas to render natural gas service. PP. 211, 212; 227.
2. Evidence conclusively establishes that Hamilton and its customers will obtain significant economic benefits from change in suppliers which will inure to the benefit of its customers in form of a rate reduction. P. 212.
3. In considering whether economic advantages to Hamilton [from change in suppliers] would be outweighed by economic disadvantages to customers of Cincinnati Gas and Ohio Fuel, Commission adheres to principles of *Lynchburg* and *Shrewsbury*. PP. 213, 214.
4. Evidence is clear that Cincinnati Gas' loss of Hamilton market will shortly be offset by an increase in its other sales. P. 215.
5. Since Texas Gas' proposal is preferred to that of Ohio Fuel, certificate requested by latter is *denied* on basis that it is not required by public convenience and necessity. P. 217.
6. Commission conclusion as to absence of any legal impediment to certification of Texas Gas [to serve area already served by another gas company] is reinforced by language of Section 7(g) of the Natural Gas Act. P. 217.
7. A natural gas company does not have a permanently fixed or vested interest in its existing markets; it should not be immunized from forces of competition operative within the industry. P. 218.
8. Commission *rejects* request that certificate be conditioned to require Hamilton to obtain abandonment authorization from State Commission even though it is not a requirement under State law. P. 219.
9. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificate of public convenience and necessity and *directs* initiation of natural gas service.

*J. David Mann, Jr.*, *Frederick Moring* and *E. Hjalmar Persson* for the City of Hamilton, Ohio.

*Christopher T. Boland*, *George J. Meiburger* and *Robert O. Koch* for Texas Gas Transmission Corporation.

*Walter E. Beckjord* for The Cincinnati Gas & Electric Company.

*R. N. Mahaffey* for The Ohio Fuel Gas Company.

*H. Raymond Andrews, Jr.* for Kentucky Gas Transmission Corporation.

*William B. Saxbe* and *Theodore K. High* for Public Utilities Commission of Ohio.

*Wallace M. Power* and *Paul J. Doppes* for the City of Cincinnati.

*W. E. Hynan, Jr.* and *M. S. Romanoff* for the Staff of the Federal Power Commission.

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*Initial decision appears on p. 221. Rehearing denied by order issued March 24, 1967, 37 FPC 598. Affirmed, *sub nom. Cincinnati Gas & Electric Co. v. F.P.C.*, 389 F. 2d 272 [CA6-1968]; cert. denied, 393 U.S. 826 1968.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

BAGGE, *Commissioner:*

### *Facts*

This proceeding originated with an application filed on June 16, 1965, by the City of Hamilton, Ohio (Hamilton), a municipal distributor, under Section 7(a) of the Natural Gas Act. It seeks authorization to divert its entire future gas supply from its present supplier, The Cincinnati Gas & Electric Company (Cincinnati Gas), to a new supplier, Texas Gas Transmission Corporation (Texas Gas). The basic facts are fully described in an initial decision issued by Examiner William C. Levy on August 8, 1966. Hence they need be recounted here only briefly. Hamilton seeks an order directing Texas Gas to establish a connection and to sell and deliver its total gas requirements of up to 37,550 Mcf per day[1] in the initial year of service. Hamilton would construct facilities costing $658,900 in order to transport the gas within its distribution system.[2] Texas Gas is willing and able to supply Hamilton. It has applied for the necessary certificate authorization to construct main line loop facilities costing $7,816,000. Cincinnati Gas opposes issuance of a certificate to Texas Gas and the order sought by Hamilton. The Ohio Fuel Gas Company (Ohio Fuel), a major interstate supplier of Cincinnati Gas, has also applied for certificate authorization of $629,000 in facilities to enable it to sell the volumes of gas sought by Hamilton. Ohio Fuel's application is conditional. It requests consideration only if the Commission concludes that Hamilton should not continue to be supplied by Cincinnati Gas.

Hamilton has obtained its total gas supply from Cincinnati Gas since 1937. The sale and service as presently rendered is not regulated by this Commission. A "Hinshaw" exemption under Section 1(c) of the Natural Gas Act was granted Cincinnati Gas in 1955, 14 FPC 534. The latest service contract was for a base period ending September 3, 1966, to continue thereafter from year to year unless and until terminated by notice of either party. The contract further provided that notice was to be given no less than six months prior to the desired termination date.[3] On February 26, 1966, after Hamilton's application had been filed but before the hearing thereon was held, Cincinnati Gas notified Hamilton that it was exercising its option to terminate the contract on the primary expiration date, September 3, 1966. By letter dated March 2, 1966, Hamilton acknowledged receipt of Cincinnati Gas' termination notice. The present service is being continued on an interim basis pending the resolution of this proceeding.

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[1] Except as otherwise noted, all volumes and rates are stated at 14.73 psia.

[2] Further distribution facilities costing an additional $500,000 would be built by Hamilton as needed to meet the needs of its consumers.

[3] Exhibit 1, Section 1.

Hamilton currently buys approximately 4,500,000 Mcf annually. It constitutes 5% of Cincinnati Gas' market and is its only wholesale customer. Hamilton's desire to replace Cincinnati Gas as its supplier is based on the lower average gas costs which will result from service by Texas Gas and the benefits which it claims can be secured from the cost savings. Cincinnati Gas argues that it should not be replaced as Hamilton's supplier on the ground that the alleged benefit to be derived from the Texas Gas service will not outweigh the detriment to it and its other customers if the Hamilton sale is lost. It contends that its ten-year loss will total $4,958,110 as against its maximum concession of a $1,242,976 saving by Hamilton.

Ohio Fuel supports Cincinnati Gas. If we find, however, that the public interest dictates that Hamilton should be given a new supplier, Ohio Fuel contends that it should be permitted to render the service. This result, it contends, will permit Cincinnati Gas to reduce its contract demand with it to the extent of the Hamilton load loss until Cincinnati Gas' remaining market growth absorbs such loss. Ohio Fuel argues that its proposal provides sufficient benefits with the least detriment to Cincinnati Gas. Under Ohio Fuel's proposal the gas required to supply Hamilton would be secured partly from Texas Gas and in part through reductions in the requirements of Cincinnati Gas and Columbia Gas of Ohio, Inc., another of its customers. The advantage of its proposal to Hamilton lies in Ohio Fuel's offer to build the circumferential distribution facilities deemed necessary by the latter.

The case has been briefed and argued by the parties.[4] It is before us on exceptions[5] to an examiner's decision: (1) granting Hamilton and Texas Gas' applications; (2) denying the continued service by Cincinnati Gas; and (3) denying the service sought by Ohio Fuel.

### *Holding*

We agree with the examiner's conclusion that the certification of Texas Gas as the future supplier of Hamilton is in the public interest. We also agree with his finding that the ability of Cincinnati

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[4] Other parties to the proceeding, in addition to the applicants, Cincinnati Gas and Staff, are the City of Cincinnati, Kentucky Gas Transmission Corporation and the Public Utilities Commission of Ohio.

[5] Filed by Cincinnati Gas, City of Cincinnati, Ohio Fuel and Kentucky Gas (jointly) and the Ohio Commission. Staff agrees with the examiner's decision.

Gas, Ohio Fuel and Kentucky Gas to render natural gas service will not be substantially impaired by the loss of the Hamilton load. Accordingly, with the additional findings expressed herein, and to the extent consistent herewith, we adopt the initial decision and order as our own.

### *Discussion*

The evidence conclusively establishes that Hamilton and its customers will obtain significant economic benefits from the change in suppliers. First, there are substantial monetary savings and additional increases in net revenue which Hamilton can reasonably be expected to realize in the first ten years of service from Texas Gas. These direct dollar savings consist of (1) $1 million in lower gas purchase costs; (2) $900,000 from the operation of Texas Gas' 90 percent minimum demand payment provision; and (3) an additional $800,000 from the recent reduction in Texas Gas' demand charge.[6] In addition, Hamilton has shown that with the lower cost commodity charge of Texas Gas it will be able to make increased industrial sales, not possible under the Cincinnati Gas rate, which will increase its profits by approximately $100,000 per year, or $1 million over the first ten years of service. There may be some question as to whether all of the foregoing benefits will in fact be realized to the complete extent described. There is no question, however, but that Hamilton will realize minimum savings of $2 million over the ten year period. Cincinnati Gas conceded that Hamilton will realize savings of $1.2 million and this computation did not include the additional $800,000 which would result from the reduction in Texas Gas' demand charge. Hamilton has represented that these savings will inure to the benefit of its customers in the form of a rate reduction.

As noted, Texas Gas' 22.22-cent commodity charge[7] will enable Hamilton to generate additional industrial sales. Three sales which the record indicates Hamilton can secure are a total of 1,500,000 Mcf annually to Champion Paper, Inc. and Beckett Paper Co. and 1,600,000 Mcf per year to Hamilton's own Electric Division. These sales will, in themselves, raise Hamilton's load factor from its present

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[6] Service by Texas Gas to Hamilton will be rendered under the former's G–4 rate schedule. At the time of the hearing, this schedule had a demand charge of $2.76 per Mcf and a commodity charge of 22.66¢ per Mcf at 15.025 psia (equivalent to $2.71 and 22.22¢ per Mcf, respectively, at 14.73 psia). On November 8, 1966, 36 FPC 835, we issued an order approving a reduction in the demand charge to $2.58 per Mcf at 15.025 psia, or $2.53 at 14.73 psia. Cincinnati Gas' rate to Hamilton, at termination of contract, was $2.3249 demand and 35.5¢ per Mcf commodity; its last rate offer for continuing service to Hamilton, which has been approved by the Ohio Commission, proposed charges of $2.03 demand and 30.5¢ per Mcf commodity.

[7] This rate is more than 8¢ per Mcf less than Cincinnati Gas' best offered rate and over 13¢ below its last contract rate.

33 percent to an estimated 57 percent. Accordingly, Hamilton's unit gas cost for all its purchases will be reduced by at least 10 cents per Mcf. Significantly, Hamilton's witness testified that the City's economy requires the development of new industry and that large industrial gas users cannot be attracted at the resale rates which necessarily would be charged if Hamilton continued its purchases from Cincinnati Gas. Hamilton estimates that without a new source, it will be unable to grow to any substantial extent. Conversely, with the new lower cost supply, Hamilton anticipates that it will make not only the additional industrial sales here detailed, totalling at least 3,100,000 Mcf annually, but will be able to attract new industry to locate in a new industrial park in which Hamilton has invested $500,000. Since the Texas Gas delivery point would be located within the industrial development area, Hamilton would be able to serve these large industrial gas loads with a minimum of investment.

Hamilton contends that it is now at a point where it must increase its distribution facilities. It can accomplish this either by building a high pressure loop around the city or by reinforcing its system internally at low pressures. The Texas Gas supply will permit the construction of the high pressure loop around the city, as needed to meet customer requirements, along the most economical lines. The cost would be slightly more than would be required if Hamilton were to construct the less efficient internal reinforcement. The need for the loop is disputed by Cincinnati Gas. Further, Ohio Fuel argues that, under its proposal, it can provide Hamilton with gas where it can best utilize the supply. Based on the evidence of record, we will accept Hamilton's contention that future residential and industrial service will best be accomplished along the lines which it proposes.

Our analysis has concerned itself up to now solely with the economic advantages which can reasonably be said to accrue to Hamilton from service by Texas Gas. It is also incumbent upon the Commission in any evaluation of a proposal such as this to consider whether such economic advantages would tend to be outweighed by economic disadvantages to the customers of Cincinnati Gas or Ohio Fuel by the withdrawal of the Hamilton load.[8] Indeed, we are obligated, in attempting to discern the public interest in this proceeding, to give full consideration to any relevant counter-balancing economic considerations. In approaching this aspect of the proceeding, we begin with the basic premise that *Lynchburg*[9] established the test for evaluating the nature and scope of injury to be sustained by the loss of a particular load. The rule of *Lynchburg*, as we interpret that decision, makes it clear that no useful purpose is served by discussing in general terms, a loss in revenues or a simple reduction in rate of growth unless these circumstances are translated, by a proper showing, into proof of substantial actual detriment to the customers of Cincinnati Gas or Ohio Fuel. It is only this latter showing of detriment which can then be weighed in the balance against the established advantages to Hamilton's consumers in determining the overall public interest.[10] Moreover, we find no support for the contention advanced herein that any different test was established by *Shrewsbury*.[11] In that case [12] the town of Shrewsbury, a local distributor, requested that NEPCO be required to sell power to it directly rather than through Massachusetts Electric, an affiliate of NEPCO serving as a middleman in the chain of supply. We granted Shrewsbury's petition on a finding that substantial benefits would be realized from the direct service and that there would be no material offsetting detriment experienced by the existing supplier. In evaluating the detriment we calculated the amount of net income which would be foregone as a result of the market loss and measured the effect that this would have on Massachusetts Electric's total net operating income. In both the court's *Lynchburg* decision and in our decision in *Shrewsbury*, first, the methodology of balancing the benefits against the detriments was employed and, second, the same economic factors were utilized in making that evaluation. We have adhered to these principles.

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[8] In referring to Ohio Fuel, we also include Kentucky Gas Transmission Corporation, both affiliated companies of the Columbia Gas System and co-suppliers of Cincinnati Gas. We note, however, that Counsel for the companies admitted that, in the long run, "* * * the burden would fall completely on Ohio Fuel." (Tr. p. 723).

Cincinnati Gas claims that it will suffer a net operating revenue loss of $2.4 million over ten years if deprived of the Hamilton market. It also asserts that Ohio Fuel will lose an additional $1.7 million in the same period. The examiner considered these contentions but concluded that they were not supported. While the mechanics of the arithmetical computations leading to the allegation are discussed by the examiner (and their deficiencies noted) it is appropriate to focus here on some of the more obvious weaknesses contained in Cincinnati Gas' calculations. First, while Cincinnati Gas shows a before tax loss of $420,000 by the third year, staff showed that under its last rate offer Cincinnati Gas would gross only $12,002 per year in annual revenues in excess of its purchased gas costs. The staff further showed that these revenues would be deficient by more than $148,000 annually in meeting the full cost of service associated with the sale. Although Cincinnati Gas may be expected to experience an increase in its purchased gas costs in the amount of $35,000 in the first year that Hamilton is off its system (.04¢ per Mcf), its average purchased gas costs actually will have decreased by .13¢ per Mcf by the third year. This reduction is attributable both to the fact that by 1969 Cincinnati Gas' purchases without Hamilton will be greater than in previous years with the Hamilton load and, further, that Cincinnati Gas' retail customers, on an overall basis, purchase their requirements at greater load factors than does Hamilton. These elements, when considered together with an improved pattern of takes from Ohio Fuel and Kentucky Gas projected by Cincinnati Gas, results in an actual savings by Cincinnati Gas of $155,000 annually.[13]

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[9] *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942 (CADC–1964).

[10] See *Columbia Gulf Transmission Co., et al.*, Docket No. CP65–102, *et al.*, Opinion No. 512, issued concurrently herewith, *supra*, p. 118.

[11] *Shrewsbury Municipal Light Department* v. *New England Power Co.*, 32 FPC 373 (1964), affirmed *sub nom. New England Power Co.* v. *F.P.C.*, 349 F. 2d 258 (1965).

[12] The action arose under Section 202(b) of the Federal Power Act, which is similar in most material respects to Section 7(a) of the Natural Gas Act.

The calculations introduced by Cincinnati Gas presuppose that it will be able to transfer 7,200 Mcf per day of purchases currently made by it from Ohio Fuel from contract demand service to the latter's lower priced winter service rate schedule. Cincinnati also proposes to allocate to the Hamilton service certain purchases of lower cost gas which it hopes it will be able to make from Texas Gas. By our order dated November 23, 1966, Ohio Fuel was advised that its proposed service agreement with Cincinnati Gas implementing the transfer of the 7,200 Mcf daily quantity to WS service was unlawful. We found that the transfer was contrary to the terms of Ohio Fuel's Gas Tariff and that the conditional availability of the volumes sought to be transferred[14] was inconsistent with the expressed 20-year term of the agreement. As to the attempted allocation of 5,000 Mcf per day of lower cost gas to Hamilton, assuming such an allocation is appropriate,[15] it is sufficient to note that Cincinnati Gas' application for an order directing Texas Gas to furnish the supply is still pending before the Commission in a contested proceeding.

The evidence is clear that Cincinnati Gas' loss of the Hamilton market will shortly be offset by an increase in Cincinnati Gas' other sales. These sales will be made at a better load factor than the present sale, and Cincinnati Gas will experience an actual reduction in its average cost of purchased gas without this load. There is no indication in the record that the loss of Hamilton will occasion any increase in rates to Cincinnati Gas' other customers or that they will be substantially harmed. We note that the examiner included a condition in his decision, proposed by staff and agreed to by Hamilton, which requires Hamilton to continue buying gas from Cincinnati Gas at the applicable rate until November 1, 1967, the date on which new nominations by Cincinnati Gas on its suppliers would become effective. We agree with the examiner that the condition is reasonable and should be adopted.

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[13] The calculations are based on exhibit material submitted by Cincinnati Gas. All uncertainties were resolved to the benefit of Cincinnati Gas in order to show the maximum detriment possible.

[14] Conditioned on Cincinnati Gas' retention of Hamilton as its customer.

[15] But see, *Colorado Interstate Gas Co.*, Opinion No. 235, 11 FPC 324, 354 (1952); *Colorado Interstate Gas Co.*, Opinion No. 313, 19 FPC 1012, 1020–1021 (1958); *Texas Gas Transmission Corp.*, Opinion No. 327, 22 FPC 378, 384 (1959); *United Gas Pipe Line Co.*, Opinion No. 428, 31 FPC 1180, 1196–1198 (1964).

Cincinnati Gas also argues that the loss of the Hamilton load would mean that certain of its facilities now devoted to the present service will no longer be used or useful and that, as a consequence, its remaining customers will be required unfairly to bear the burden of the undepreciated costs. Without passing on the question of whether the proper valuation for these facilities is $1 million, as contended by Cincinnati Gas, or only $300,000, as claimed by Hamilton, the record clearly establishes that the laterals leading to Hamilton from Cincinnati Gas' main north-south line are also used to service the fast growing suburban areas of the City of Cincinnati, including the Cities of Fairfield and New Miami. Hence, although the load factor in these lines will be diminished initially, this should occasion little more than a short term adjustment before the resulting slack is picked up by other sales. Hamilton has offered to purchase four of the five sales and metering stations now used by Cincinnati Gas in making its deliveries, the fifth station being used primarily to make other deliveries.

Ohio Fuel argued that it will fail to recover $170,000 of its fixed costs without the sale to Cincinnati Gas for Hamilton. The record, however, shows that Ohio Fuel's commodity rate contains 3.4¢ per Mcf for coverage of fixed charges. It calculates its loss by multiplying this amount by 4,995,605 Mcf, the estimate of the sales Cincinnati Gas would make to Hamilton in 1970 in the absence of the certification of Texas Gas.[26] However, as is apparent from Cincinnati Gas' own exhibits, the total cut-back on Ohio Fuel in the first year will be only 546,408 Mcf, or a reduction of less than $18,600 in the coverage of fixed costs. This amount is minimal and will have no significant effect on Ohio Fuel or its customers.

Although Ohio Fuel's application qualifies for consideration on a comparative basis with the other proposals, its rate for service to Hamilton would be little better[27] than Cincinnati Gas' last offer. Hamilton has shown that service from Ohio Fuel would cost it almost $2 million more in the first ten years of operation than would service from Texas Gas. Thus, the same deficiencies associated with the comparatively higher commodity charge of Cincinnati Gas *vis-a-vis* the Texas Gas rate are present in Ohio Fuel's application. We agree with Hamilton's statement in its brief that" * * * service from Ohio Fuel, even under the most favorable circumstances, would be virtually on a par with that from C.G.&E." Finally, to the extent that a portion of the gas supplied would be purchased by Ohio Fuel from Texas Gas, its proposal amounts to little more than the replacement of one intermediate supplier by another.[18] We note that Hamilton is the only existing distributor in the state of Ohio which does not have a direct source of supply from an interstate pipeline but is compelled to buy from another intrastate distributor. In our opinion, the Texas Gas-Hamilton proposal is to be preferred to the service proposed by Ohio Fuel. The certificate requested by Ohio Fuel will be denied on the basis that the issuance thereof is not required by the present or future public convenience and necessity.

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[26] Tr. page 265; Exhibit 3, Section 1, page 5.

[27] Within 1 cent per Mcf on the commodity charge for contract demand service.

Ohio Fuel argues that a certificated load for an existing market such as Hamilton is outside the area of competition and claims that we may not certificate a new supplier therefor "without compelling reasons." It relies on *U.S.* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 660 (1964). We do not read *El Paso* that way. *El Paso* did not limit the scope of our discretion in a case of this nature merely to the question of who shall supply incremental loads. The court's discussion in *El Paso*,[19] to the effect that certification of one supplier withdraws that market from competition, was made in the context of its discussion of the general character of the interstate pipeline industry differs from that generally encountered. Our conclusion as to the absence of any legal impediment to the certification of Texas Gas is reinforced by the language of Section 7(g) of the Natural Gas Act which provides, "Nothing in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company."

The D.C. Circuit in *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 169 F. 2d 881 (1948), and the Sixth Circuit in *Kentucky Natural Gas Corporation* v. *F.P.C.*, 159 F. 2d 215 (1947), both had occasion to review Commission orders authorizing new pipeline suppliers to enter existing markets already served by another supplier. Both courts upheld the Commission's orders on a finding that the Natural Gas Act does not grant an exclusive or perpetual right to serve a market.

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[18] We do not overlook the fact that Ohio Fuel, in its usual course of business, is a long-line interstate supplier. Our comment is limited to the bounds of the proposal which it here advanced.

[19] That proceeding did not arise as a case under the Natural Gas Act but was an antitrust proceeding involving Section 7 of the Clayton Act.

*Kentucky Natural* is particularly relevant.[20] In that case the Mattoon, Illinois area had been served for many years by Central Illinois Public Service Company. CIPSCO received its gas from Kentucky Natural Gas Corporation which, in turn, was supplied by Panhandle Eastern. CIPSCO applied for and was granted a certificate to connect directly to Panhandle, thus replacing Kentucky Natural which had been the sole supplier. In upholding the Commission the court noted that, "The elimination of an unnecessary middleman between the wholesaler and the retailer is a material benefit to the ultimate consumer at retail."[21]

A natural gas company does not have a permanently fixed or vested interest in its existing markets. It should not be immunized from the forces of competition operative within the natural gas industry. If the overall public interest will be better served by permitting a competing company to supply an existing market it should be permitted to do so.

The parties opposing the new service by Texas Gas to Hamilton also argue that the Commission cannot authorize Texas Gas' construction of $7.8 million in new mainline facilities when Cincinnati Gas has facilities already available to render the same service. There is no question here but that Texas Gas' project is economically feasible. Its revenues will exceed its incremental cost of service (including a 6½% rate of return) by more than $200,000 annually. On this basis, and in light of the considerations expressed above, we will grant a certificate to Texas Gas in accordance with its application.

## *Conclusion*

The Commission is required under the Natural Gas Act to act in a manner consistent with the broad concept of the public interest. In attempting under any given circumstance to discern the public interest it is required to assure that adequate gas supplies are made available to consumers at the lowest reasonable rates consistent with the maintenance of adequate service.[22] The concept of public interest and public convenience and necessity are not static. The factors contributing to their fulfillment are dynamic. This is especially true in an industry which is obliged to compete with other energy sources to expand or even retain its markets.

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[20] 159 F. 2d 215 (1947).

[21] See also *Shrewsbury Municipal Light Department v. New England Power Company, supra.*

[22] *Atlantic Refining Co. v. P.S.C.*, 360 U.S. 378 (1959).

At one time Hamilton's only gas source was through Cincinnati Gas. It has now shown that it can secure a reduction in costs if its future supply is provided by Texas Gas. It has also demonstrated that the detriment to Cincinnati Gas and the customers of Cincinnati Gas is minor and of a diminishing nature and will be completely offset on a netting basis within a two- to three-year period. For the reasons expressed herein and in the initial decision, we conclude that the order applied for by Hamilton and the certificate sought by Texas Gas should be granted.

The Ohio Commission, the Columbia Companies and Cincinnati Gas all contend that any certificate authorizing Texas Gas to serve Hamilton should contain a condition precedent requiring Hamilton to secure State authorization for the abandonment of the present service. The record shows that in 1965 Cincinnati Gas brought an action in the Common Pleas Court to enjoin Hamilton from terminating its purchases of gas at the contract expiration date without first obtaining the approval of the Ohio P.U.C. The court ruled that Hamilton had plenary power under the State Constitution to contract for utility services and cannot be restricted in its right by imposing a requirement that it secure State Commission abandonment approval. Denial of the injunction thereafter was upheld in a *per curiam* order by the Ohio Court of Appeals. On October 19, 1966, the Ohio Supreme Court dismissed Cincinnati Gas' appeal on the ground that no substantial constitutional question existed.[20]

Petitioners, in seeking such a condition ask, in effect, that through our conditioning power we require Hamilton to obtain abandonment authorization from the State Commission even though this may not be a requirement under the State law. We do not believe that this would be a proper exercise of our power and will not attach such a condition. If the State Commission statutorily and constitutionally has such authority, Hamilton will be required to obtain abandonment authorization; a condition on our part can confer no greater power on the State Commission than already may exist.

*The Commission further finds:*

(1) The City of Hamilton, Ohio, is a municipality engaged in the distribution of natural gas to the public and an applicant herein. It owns and operates its gas distribution system and purchases its natural-gas requirements from The Cincinnati Gas and Electric Company, a public utility under the laws of Ohio, for distribution within the city limits of Hamilton.

(2) Texas Gas Transmission Corporation and The Ohio Fuel Gas Company, applicants in Docket Nos. CP66-13 and CP66-207,

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[20] Rehearing denied by order issued November 23, 1966.

respectively, are "natural-gas companies" within the meaning of the Natural Gas Act subject to the jurisdiction of this Commission.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) Cincinnati Gas is a public utility distribution company selling natural gas and electricity in the southwest corner of Ohio and by virtue of the exemption granted in February 1955 in Docket No. G-2535, under the provisions of the Hinshaw Amendment to the Natural Gas Act, its gas operations are not now subject to the jurisdiction of this Commission.

(5) The order sought by Hamilton in Docket No. CP65-402, and the construction and operation of the facilities proposed by Texas Gas in Docket No. CP66-13, as amended, are required by the public convenience and necessity subject to the condition, however, that Texas Gas shall not commence service to Hamilton prior to November 1, 1967, and that until such date Hamilton shall continue to purchase its natural gas requirements from Cincinnati Gas at not less than the applicable lawful rate.

*The Commission orders:*

(A) A certificate of public convenience and necessity is hereby issued to the Texas Gas Transmission Corporation and said Company is hereby directed, pursuant to Section 7(a) of the Act, to sell gas to the City of Hamilton, Ohio, on the conditions set forth herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as more fully described in the applications, as amended.

(B) The certificate herein issued to the Texas Gas Transmission Corporation, Docket No. CP66-13, and the order pursuant to Section 7(a) of the Act, are subject to the condition that Texas Gas shall not commence service to Hamilton prior to November 1, 1967, and that until such date Hamilton shall continue to purchase its gas requirements from Cincinnati Gas at not less than the applicable lawful rate.

(C) The application of The Ohio Fuel Gas Company in Docket No. CP66-207 is denied.

(D) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

(E) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this Opinion and order.

## INITIAL DECISION
## OF THE PRESIDING EXAMINER UPON CONSOLIDATED APPLICATIONS UNDER SECTION 7 OF THE NATURAL GAS ACT

(Issued August 8, 1966)

LEVY, *Presiding Examiner:* This proceeding was initiated by Commission orders issued September 30, 1965, and January 21, 1966, consolidating for hearing an application filed on June 16, 1965, under Section 7(a) of the Natural Gas Act by the City of Hamilton, Ohio (Hamilton), a municipally owned distributor, seeking a new supply of natural gas from Texas Gas Transmission Corporation (Texas Gas), with various competitive applications and proposals. These include an application filed on July 15, 1965, by Texas Gas for authorization pursuant to Section 7(c) of the Act to construct the necessary facilities at an estimated cost of $7,816,000, to sell and deliver the volumes of gas sought by Hamilton, a competitive application by The Ohio Fuel Gas Company (Ohio Fuel), and various rate and service proposals of Hamilton's present natural-gas supplier, Cincinnati Gas and Electric Company (Cincinnati Gas).

Interventions were permitted by orders issued on September 30, 1965, and February 11, 1966. Intervenors include Cincinnati Gas and the City of Cincinnati.

A prehearing conference was held on November 22, 1965, followed by various settlement conferences during January and February 1966. Hearing commenced on March 2, 1966, and concluded on March 4, 1966. After the close of the hearings, Exhibits 43, 44, and 45 were offered in evidence and a petition filed by Texas Gas to amend its application. Briefing was concluded on May 19, 1966.

Hamilton, a municipally owned and operated gas distribution system, serves more than 20,000 customers in an area of some 79,000 people, about 20 miles north of Cincinnati, Ohio. Since 1937, Hamilton has obtained its total gas supply from Cincinnati Gas, which in turn is supplied by The Ohio Fuel Gas Company (Ohio Fuel) and Kentucky Gas Transmission Corporation (KGT), both Columbia System Companies.

The sale of gas by Cincinnati Gas to Hamilton is not regulated by the Federal Power Commission, an exemption having been granted under Section 1(c) of the Act on February 3, 1955, (Item C). Hamilton constitutes approximately 5% of Cincinnati Gas' market and is its only wholesale customer.

Prior to its present application, Hamilton investigated the alternative sources of supply with a view to obtaining the most economical service available. Its present contract with Cincinnati Gas was executed in 1957, and expires by its terms on September 3, 1966. By letter of February 26, 1966, Cincinnati Gas advised Hamilton that it would terminate the contract on the expiration date, and by letter of March 2, 1966, Hamilton acknowledged the notice and stated that even if Cincinnati Gas should seek to withdraw its letter of termination, Hamilton would terminate the contract.

Hamilton's alternative sources of gas are Texas Gas, whose main transmission system passes within the city limits of Hamilton, and Ohio Fuel. Formal negotiation between Hamilton and Cincinnati Gas ended with the decision of the Hamilton City Council in April 1965, to seek Commission authorization for a supply of gas from Texas Gas. However, since the filing of the Hamilton application in June 1965, Cincinnati Gas has made successively more attractive offers, the latest of which proposed $2.03 per Mcf of demand and 30.5¢ per Mcf of commodity delivered with propane air service for an annual demand charge of $5.00 and 85.0¢ per Mcf commodity charge (Exh. 23). The presently effective rates are $2.3249 demand and 35.5¢ commodity (Tr. 240).

*The Competing Proposals*

In Docket No. CP66–13, as amended, Texas Gas seeks to construct and operate approximately 25.89 miles of 36" loop pipeline in Louisiana, 5.64 miles of 36" loop pipeline near the Tennessee-Missouri border, 20.81 miles of 30" loop pipeline in Kentucky, and a metering station in Ohio by means of which it would deliver up to 37,550 Mcf per day (contract demand) of natural gas to Hamilton at an estimated cost of $7,816,000. To receive such gas Hamilton would construct approximately 7.2 miles of pipeline and related facilities around the eastern outskirts of the city, together with five pressure regulating stations, at a total cost of $658,900.

The evidence introduced by Texas Gas in support of its application is uncontroverted; all parties having waived cross-examination of its witnesses. The facilities proposed are adequate to render the service requested by Hamilton; costs are reasonable; reserves adequate; and the project presents no problems as to engineering, financing, markets, or economic feasibility.

In addition to the Texas Gas facilities, Hamilton proposes to construct peak-shaving facilities at a cost of $340,000 in order to keep its peak-day contract demand purchases from Texas Gas at a level whereby Hamilton can take advantage of the 90% minimum demand payment provision in Texas Gas' tariff. Service by Texas Gas would be rendered under its G–4 Rate Schedule with a demand charge of $2.76 per Mcf and a commodity charge of 22.66¢ per Mcf (Exh. 5, Tr. 168–173). The proposed facilities around the eastern outskirts of Hamilton constitute the first phase of a high pressure pipeline loop, the second phase of which will be constructed by Hamilton as load growth dictates, and are estimated to cost approximately $500,000 (Exh. 1, Tr. 412–413).

Ohio Fuel prefers Cincinnati Gas to continue serving Hamilton since it is a partial supplier of gas to Cincinnati; but in Docket No. CP66–207, it seeks to serve Hamilton directly in the event it is determined that Cincinnati Gas ought to be replaced by another supplier. In that event, Ohio Fuel seeks authorization to construct and operate some 38,000 feet of pipe and five metering and regulating stations at an estimated cost of $610,000 to deliver gas to Hamilton in the amount of 37,550 Mcfd in the first year, 42,350 Mcfd in the second year, and 43,250 Mcfd in the third year (Exhs. 34 and 35). The gas would be obtained in part from Texas Gas and would be sold to Hamilton under Ohio Fuel's CDS 2–A and WS Rate Schedules (Exhs. 35 and 36). Ohio Fuel's present commodity rate is 29.84¢ per Mcf, as compared with Texas Gas' proposed charge of 22.66¢ per Mcf.

In its latest proposal, Cincinnati Gas has offered peak-shaving service to Hamilton on a firm basis containing $5 per Mcf per annum demand charge and 85¢ per Mcf for all propane air delivered. It has offered to reduce its present rate from a $2.3249 demand charge and a 35.5¢ commodity charge to a $2.03 demand charge and a 30.5¢ commodity charge. In Exhibit 43, filed after the close of the hearing, Cincinnati Gas suggests the construction of two high pressure delivery points to connect Texas Gas' main transmission line with Hamilton and sets forth the alleged dollar advantage to Hamilton in this latest proposal.

*Issues and Contentions*

The Texas Gas-Hamilton proposal will provide Hamilton with the lowest cost gas supply. Cincinnati Gas agrees that "A Texas Gas supply would be cheaper for the City than supplies from either Cincinnati Gas or Ohio Fuel, in that order" (Br. p. 1).

The basic issue in this proceeding, therefore, is whether the benefits to Hamilton of a lower cost gas supply from Texas Gas are outweighed in the scales of the public interest by the adverse impact on Cincinnati Gas, its customers, and suppliers. As noted by Cincinnati Gas in its reply brief, "The only real issue made by the briefs concerns the measurement of the harm to CG&E and its customers" (p. 1).

Hamilton claims it will save over $1,900,000 in the initial ten years of service from Texas Gas (Br., App. B, Sheet 1). Texas Gas' low commodity rate (22.66¢) is substantially below the lowest commodity charge proposed by Cincinnati Gas (30.5¢). The increased industrial sales made possible by this decrease in commodity rates will increase Hamilton's profits by some $100,000 per year, or $1,000,000 over the first ten years of service. Savings over Ohio Fuel's proposed service would be at least as large (Ham. Br., App. B, Sheet 2).

Cincinnati Gas argues that the monetary loss to it of the Hamilton load ($4,953,000) far outweighs the advantages ($1,242,976) to Hamilton. The Columbia Companies, Ohio Fuel and Kentucky Gas, maintain that the benefits to Hamilton are substantially overstated and the adverse impact on Cincinnati Gas and Ohio Fuel unduly minimized. Both Cincinnati Gas and Ohio Fuel insist that their displacement by Texas Gas would seriously disrupt their operations, leave them with the burden of demand charges and idle facilities, and require the construction of unnecessary new facilities by Texas Gas and Hamilton.

The applications of Hamilton, Texas Gas, and Ohio Fuel meet all formal Commission requirements for certification pursuant to Section 7(c) of the Act (Staff Br., p. 6).

Staff supports the Texas Gas-Hamilton proposal which, in its view, will provide the lowest cost gas supply and permit a general rate reduction by Hamilton of about $300,000 per year, without resulting in any substantial harm to Cincinnati Gas, its suppliers or customers.

*The Texas Gas-Hamilton Proposal*

While the Texas Gas-Hamilton proposal will provide Hamilton with the lowest cost gas supply, the evidence is in conflict as to the extent of such savings in the cost of purchased gas. Hamilton claims savings of $1,907,215 over a 10-year period (Br., App. B). Cincinnati Gas concedes that Hamilton can purchase gas at a lower cost from Texas Gas by reason of the 90% minimum demand clause in Texas Gas' tariff, but estimates the saving at $1,242,976 over the same 10-year period. The difference between the two estimates lies in the cost of service assigned to the competing proposals by Hamilton and Cincinnati Gas. Hamilton claims it needs a low pressure loop at an estimated cost of $908,000 to continue its present purchases from Cincinnati Gas. It compares this cost with the sum of $1,158,000, the estimated cost of the high pressure transmission system around the city incident to the Texas Gas proposal.

Hamilton includes the difference between these two figures of $250,000 in the fixed charges associated with the Texas Gas proposal (Exhs. 7, 44). Cincinnati Gas does not include in its estimates any of the anticipated costs of the low-pressure loop which Hamilton says it will need to continue purchasing its future requirements from Cincinnati Gas (Exhs. 26, 43). Cincinnati Gas' Exhibit 43, filed after the close of the hearing, is a last minute proposal to meet this objection by suggesting the possibility of two more high pressure delivery points on the north and west sides of Hamilton to connect Texas Gas' mainline with Hamilton, thus obviating the need for the low-pressure loop. However, the record does not show sufficient details to evaluate the feasibility and cost of this proposal on a comparative basis with the detailed proposals which were the subject of cross-examination during the hearing. In any event, the Texas Gas-Hamilton proposals represents a substantial saving to Hamilton of at least $1,242,976 over the 10-year period.

Moreover, Hamilton witness Brush testified that Texas Gas' low commodity rate will enable Hamilton to make additional industrial sales of 1,500,000 Mcf per year to two papermills and 1,600,000 Mcf to Hamilton's electric division. These additional annual requirements total 3,100,000 Mcf (Tr. 90–92) and would provide an additional $100,000 per year savings to Hamilton, raising to $2,907,215 the 10-year's savings to Hamilton, if it is able to obtain its supply from Texas Gas at a commodity rate of 22.66¢ rather than Cincinnati Gas' proposed rate of 30.5¢.

Hamilton has invested large sums for an industrial park in an area adjoining the proposed connection with Texas Gas. Hamilton needs new industry, and a competitive advantage of approximately 5.5¢ per Mcf in its ability to make industrial sales should enable it to achieve the estimated potential load.

These increased industrial sales will reduce Hamilton's average cost of purchase gas from 48.3¢ per Mcf to 38¢, with a load factor improvement from Hamilton's present 35% to an estimated 57%. Further load factor improvement will produce additional savings. The savings projected by Hamilton with a Texas Gas supply are accepted as reasonable and as supported by the record.

A further advantage to Hamilton in the Texas Gas proposal is a firm 20-year service agreement subject to Federal Power Commission jurisdiction and rate regulation. Hamilton's present gas purchase contract with Cincinnati Gas terminates by its terms and by action of both parties on September 3, 1966. Cincinnati Gas' present sales to Hamilton are not subject to Federal regulation by virtue of the exemption granted in February 1955, in Docket No. G–2535 under the provisions of the Hinshaw Amendment to the Natural Gas Act. Moreover, Hamilton is convinced that the Public Utilities Commission of Ohio (PUCO) cannot provide effective regulatory protection. In this connection, Hamilton cites a recent opinion by the Butler County Court of Common Pleas issued February 23, 1965, in an action filed by Cincinnati Gas to restrain Hamilton from obtaining a new gas supply, holding that the PUCO lacks regulatory jurisdiction over the Hamilton-Cincinnati Gas contract. The Court's denial of the relief sought by Cincinnati Gas was affirmed *per curiam* by the Ohio Court of Appeals on May 5, 1966.

By letter dated July 7, 1966, Cincinnati Gas' counsel submitted a copy of an order by the PUCO entered June 29, 1966, asserting jurisdiction over the sale of gas by Cincinnati Gas to Hamilton and approving the proposed rates offered by Cincinnati Gas.

The jurisdiction and ability of the PUCO to afford effective regulatory protection over the sales involved herein is in doubt. Moreover, the rates provided in Cincinnati Gas' latest proposal are so low in terms of the cost of providing such service[1] as to justify Hamilton's concern that these proposed rates are not as firm as the 20-year agreement proposed by Texas Gas.

### *Impact on Cincinnati Gas*

Cincinnati Gas maintains that the proposed loss of the Hamilton load to Texas Gas is not in the public interest because "the harm to CG&E and its customers far outweighs any benefits to Hamilton" (Rep. Br., p. 1). Specifically, it contends that the facilities already installed and in operation to service Hamilton gas requirements, representing a net investment of $998,741 (Tr. 213–215), will be idled by the change of suppliers, and the fixed charges associated with such service transferred to Cincinnati Gas or its customers. Net losses before taxes are estimated by Cincinnati Gas at a minimum of $420,000 per year by the third year and extend indefinitely into the future (Exh. 25, Tr. 597). These losses include demand charges which it will have to pay its suppliers for gas it is obligated to purchase but will not be able to use without the Hamilton load, the markup on the sales to Hamilton, and the loss sustained by its inability to purchase 7,200 Mcf of additional Winter Service under the more favorable Columbia System WS tariff (Exhs. 24, 25), and 10,000 Mcf of low cost gas which it intends purchasing from Texas Gas. They do not include the adverse effect on Cincinnati Gas' principal suppliers, Kentucky Gas and Ohio Fuel, which Ohio Fuel estimates as $170,000 in fixed costs, or a total combined loss of $590,000.

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[1] In Exh. 24, Hamilton is assigned the entire benefit of reduced costs arising out of the transfer of 7,200 Mcfd of existing gas demand from Ohio Fuel's CD rate to its WS rate (Tr. 123, 244) and lower costs out of its expected purchase of gas from Texas Gas (Tr. 344–346).

Hamilton and Staff do not dispute that the loss of the Hamilton load will have some adverse impact on Cincinnati Gas and its suppliers. They suggest, however, that the actual losses are small and will be quickly offset by market growth, improved load factor, and a reduction in the average cost of purchased gas.

Staff's Appendix A shows that Cincinnati Gas' revenues received from Hamilton in 1968, will exceed its purchase gas costs by only $12,002, and will fall to $148,060 below its full cost of service to supply Hamilton's gas requirements. Hamilton buys gas from Cincinnati Gas at a 35% load factor, as against a 50% load factor for Cincinnati Gas' purchases without Hamilton will be greater than in previous years with Hamilton (App. B, Exh. 25). The decrease in Cincinnati Gas' average cost of gas from 43.25¢ in 1967 with Hamilton, to 43.12¢ in 1969 without Hamilton, will save Cincinnati Gas $154,923 (Staff Br. App. B). This saving will exceed the loss estimated by Cincinnati Gas—$153,811 (Exh. 24). Staff adds an additional offset of $352,590 in gross revenues ($279,674 after fixed expenses) which Hamilton will pay to Cincinnati Gas in 1967 under existing rates (Staff Br. App. C). In addition, the reduction in Cincinnati Gas' average cost of gas without Hamilton will benefit its remaining customers (See Staff Br. App. A).

The lines used to serve Hamilton will not be abandoned but will continue to be used to serve other customers, including the rapidly growing areas of Fairfield and New Miami (Tr. 453–454). Moreover, Hamilton has stated its willingness to purchase the metering stations now used to serve Hamilton.

The Hamilton load in the amount of 4,500,000 Mcf per year represents approximately 5% of Cincinnati Gas' total annual sales and little more than one year's load growth in 1968. It is less than one-half of Ohio Fuel's estimated load growth of approximately 11,579,000 Mcf in that year (Exh. 32).

The evidence shows that the impact on Cincinnati Gas of the loss of the Hamilton load will be absorbed by 1969, and will not result in any permanent substantial harm to Cincinnati Gas, its suppliers or customers (See Examiner's Table). In fact, its customers will benefit from a reduction in their average cost of gas after 1968, and the elimination of Hamilton, a poor load factor customer. Nor is there any support for the implication that the loss of the Hamilton load will require a rate increase by Cincinnati Gas or Ohio Fuel, or otherwise jeopardize their ability to render natural-gas service. On the contrary, the customers of both Cincinnati Gas and Ohio Fuel will benefit from the lower gas purchase costs incident to the proposed new gas supply from Texas Gas. Finally, the minimal harm to Cincinnati Gas and Ohio

Fuel is more than outweighed by the substantial permanent benefits to Hamilton of the Texas Gas connection.

***Judicial Precedents and Commission Policy***

All parties invoke the same judicial precedents which hold generally that a public utility does not have a monopoly on its existing market and that a customer company may be authorized to change suppliers, or to obtain additional increments of gas from a second supplier, when and where the public interest requires.[3]

The real issue here, as noted previously, is the determination of the public interest in the light of the specific advantages and disadvantages of the competing proposals.

Two of the decisions are particularly applicable to the instant proceeding. Cincinnati Gas emphasizes the alleged permanent impact of the loss of the Hamilton load on its gross revenues for the indefinite future including the loss of future profits or markup and the right to grow in Winter Service (Exh. 25). The *Lynchburg* decision, cited *supra*, however, suggests that this is an improper test for measuring the impact of market loss. The proper test is the impact on total revenues, or the net loss, rather than the loss in rate of growth. As noted by Judge Fahy (p. 947), "Even should there be a substantial decline in Seaboard's sales to Lynchburg, or some other customers similarly situated, *this loss might be more than offset by an increase in other sales.*" [Emphasis supplied]

The record in this proceeding indicates that the loss of the Hamilton load will be more than offset after 1968, by an increase in Cincinnati Gas' other sales, improved load factor in its gas purchases, and a reduction in its average cost of purchased gas.

In the *Shewsbury* decision, cited *supra*, the Commission eliminated the middleman, Massachusetts Electric, the existing supplier to the town of Shrewsbury, and concluded that Shrewsbury should be served directly by NEPCO on the ground that direct sales by NEPCO would save the town over $42,000 a year and permit Shrewsbury to compete for industrial loads with the surrounding areas. The analogy between Cincinnati Gas and Massachusetts Electric is a close one. Cincinnati Gas is not an interstate pipeline supplier; it is a distribution company. Hamilton is its only wholesale customer. Its replacement here by Texas Gas represents the replacement of a middleman, Cincinnati Gas, by a direct long line pipeline supplier, Texas Gas. As noted in *Kentucky Natural Gas Corp.* v. *F.P.C.*, cited *supra*, p. 219, "The elimination of an unnecessary middleman between the wholesaler and the retailer is a material benefit to the ultimate consumer at retail." Ohio Fuel and Kentucky Gas are in an intermediate position between Cincinnati Gas and Texas Gas. This does not suggest that every distribution company selling gas for resale should be replaced by a pipeline supplier passing through the service area of its customer companies. It does suggest that where, as here, the loss of the Hamilton load will be absorbed by Cincinnati Gas' load growth, will not require higher rates, and will benefit the customers of Hamilton and Cincinnati Gas with lower gas costs, the public interest is not served by barring Hamilton from access to the direct, lower cost source of pipeline gas represented by Texas Gas. Continuation of Cincinnati Gas as Hamilton's sole supplier provides no economic or operating advantage to Hamilton or the consuming public.

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[3] *Arkansas Louisiana Gas Co.* v. *Federal Power Commission*, 113 F. 2d 281 (CA5–1940); *Home Gas Co.* v. *F.P.C.*, 231 F. 2d 253 (CADC–1956), cert. denied 352 U.S. 831 (1956); *Kentucky Natural Gas Corp.* v. *F.P.C.*, 159 F. 2d 215 (CA6–1947); *Lodi Telephone Co.* v. *Public Service Commission*, 262 Wisc. 416, 55 N.W. 2d 379 (1953); *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942 (CADC–1964); *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 169 F. 2d 881 (CADC–1948), cert. denied 335 U.S. 854 (1948); *Shrewsbury Municipal Light Department* v. *New England Power Co.*, 32 FPC 373 (1964), aff'd *sub nom. New England Power Co.* v. *F.P.C.*, 349 F. 2d 258 (1965).

Finally, Cincinnati Gas emphasizes the "heavy burden" on Hamilton "to show that the switch is in the public interest" (Rep. Br. p. 1). In *Kentucky Natural Gas Corp. v. F.P.C.* cited *supra*, the Court approved an order of the Commission permitting Central Illinois to replace Kentucky Natural Gas Corporation with Panhandle as the sole supplier for the Mattoon area.

> Where two competing applicants are both qualified to perform the proposed service, the Commission is necessarily called upon to rule in favor of one and against the other. Such a ruling can not be set aside on this review unless shown to be arbitrary. (citing cases) The burden of making such a showing falls upon the petitioner. It has not been met in this case. Its chief contention in attempting to meet this burden is that it has been satisfactorily supplying this territory since 1932 by obtaining natural gas from Panhandle and delivering it to Central Illinois through its own facilities at a point on the Indiana-Illinois state line, and that while Central Illinois has been earning a fair return on its rate base, Kentucky Natural has been operating at a loss for many years and its ability to render adequate service at reasonable rates in its remaining area would be jeopardized by the loss of its sales to Central Illinois. But a right to continue to exclusively serve the Mattoon area is not granted to it by the Natural Gas Act. On the contrary, § 717f(g), Title 15 U.S.C.A. appears to specifically recognize the right of the Federal Power Commission to issue a certificate of public convenience and necessity to a competitor, by providing "Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural gas company." (Citing case.) The Commission also found as a fact that the record does not show that the ability of Kentucky Natural to render natural gas service will be jeopardized by the loss of the business of Central Illinois, thus factually rejecting petitioner's contention in that respect. This negative finding is supported by the evidence (p. 218).

The evidence in this proceeding supports the conclusion that the proposed switch to Texas Gas is in the public interest and that the ability of Cincinnati Gas, Ohio Fuel, and Kentucky Gas to render natural-gas service will not be jeopardized by the loss of the Hamilton load.

## CONCLUSION

Hamilton has expressed its willingness to continue buying gas from Cincinnati Gas at applicable rates until September 3, 1967. Staff, in recommending that the Hamilton-Texas Gas proposal be certificated, suggests that Commission approval be conditioned to require Hamilton to continue receiving its natural-gas requirements from Cincinnati Gas until November 1, 1967, "in order to mitigate such damages Cincinnati Gas may incur through the loss of sales to Hamilton." (Staff Br., p. 28). The Staff proposal is adopted as reasonable. The delay will also permit Cincinnati Gas to renegotiate its tariff with the Columbia System companies in the light of the prospective loss of the Hamilton load and the Commission's ultimate decision in *Atlantic Seaboard Corp.*, Docket No. G–16401, *et al.*, in which the Examiner recently held, *inter alia*, that Kentucky and Ohio Fuel have not shown that their PR rates are justified or lawful (See Initial Decision issued July 14. 1966, mimeo. p. 27.)

Texas Gas' petition to reopen the proceedings for the limited purpose of receiving Exhibit 45, the testimony relating hereto, and amending its application is granted. Exhibits 43, 44, 45, and Item G are received in evidence.

### ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding including the pleadings, the evidence adduced, and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The City of Hamilton, Ohio, is a municipality engaged in the distribution of natural gas to the public and an applicant herein. It owns and operates its gas distribution system and purchases its natural-gas requirements from the Cincinnati Gas & Electric Company, a public utility under the laws of Ohio, for distribution within the city limits of Hamilton.

(2) Texas Gas Transmission Corporation and The Ohio Fuel Gas Company, applicants in Docket Nos. CP66-13 and CP66-207, respectively, are "natural-gas companies" within the meaning of the Natural Gas Act subject to the jurisdiction of this Commission.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) Cincinnati Gas is a public utility distribution company selling natural gas and electricity in the southwest corner of Ohio and by virtue of the exemption granted in February 1955 in Docket No. G-2535, under the provisions of the Hinshaw Amendment to the Natural Gas Act, its gas operations are not now subject to the jurisdiction of this Commission.

(5) The order sought by Hamilton in Docket No. CP65-402, and the construction and operation of the facilities proposed by Texas Gas in Docket No. CP66-13, as amended, are required by the public convenience and necessity subject to the condition, however, that Texas Gas shall not commence service to Hamilton prior to November 1, 1967, and that Hamilton shall continue to purchase its natural-gas requirements from Cincinnati Gas at not less than the applicable lawful rate for such sales until November 1, 1967.

### ORDER

WHEREFORE, *It Is Ordered*, subject to review by the Commission on appeal or upon its own motion, as provided by its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued to the Texas Gas Transmission Corporation and said company is hereby directed, pursuant to Section 7(a) of the Act, to sell gas to the City of Hamilton, Ohio, on the conditions set forth herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as more fully described in the applications, as amended.

(B) The certificate herein issued to the Texas Gas Transmission Corporation, Docket No. CP66-13 and the order pursuant to Section 7(a) of the Act, are subject to the condition that Texas Gas shall not commence service to Hamilton prior to November 1, 1967, and that Hamilton shall continue to purchase its gas requirements from Cincinnati Gas at not less than the applicable lawful rates for such sales until November 1, 1967.

(C) The application of The Ohio Fuel Gas Company in Docket No. CP66-207 is denied.

WILLIAM C. LEVY,
*Presiding Examiner.*

CITY OF HAMILTON, OHIO, DOCKET NO. CP65–102, ET AL.

*Effect of the Loss of the Hamilton Load on Cincinnati G. & E., Ohio Fuel and Kentucky cost trends assuming Hamilton disconnects Jan. 1, 1965, data from Exhibit 25 (C.G. & E.)*

[Examiner's table]

| | C.G.E. purchases from K.G.T. | | | C.G.E. purchases from Ohio Fuel | | | C.G.E. purchases from Texas Gas | | | C.G.E. total purchases | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Sum of contract dem.-Mcf. | Annual volumes-Mcf. | Cost of gas to C.G.E. | Sum of contract dem.-Mcf. | Annual volumes | Cost of gas to C.G.E. | Sum of contract dem-Mcf. | Annual volumes-Mcf. | Cost of gas to C.G.E. | Sum of contract dem.-Mcf. | Annual volumes-Mcf. | Cost of gas | Cost of gas per Mcf. (cents) |
| 1967 | 391,745 | 71,198,300 | $30,724,850 | 90,000 | 16,500,000 | $7,146,840 | | | | 481,745 | 87,698,300 | $37,871,690 | 43.18 |
| 1968 | 391,745 | 71,430,792 | 30,790,529 | 90,000 | 15,953,592 | 7,042,356 | | | | 481,745 | 87,384,384 | 37,832,885 | 43.29 |
| Inc. or (Dec.) | | 232,492 | 75,779 | | (546,408) | (104,484) | | | | | (313,916) | (38,805) | 0.11 |
| 1969 | 402,595 | 71,481,347 | 31,000,111 | 90,000 | 16,000,000 | 7,056,000 | 10,000 | 3,650,000 | $1,158,290 | 502,595 | 91,131,347 | 39,214,401 | 43.03 |
| Inc. or (Dec.) over 1967 | 10,855 | 283,047 | 275,261 | | (500,000) | (90,840) | | | | 20,850 | 3,433,047 | 1,342,711 | (0.15) |
| Total Inc. or (Dec.) | 10,855 | 515,539 | 351,040 | | (1,046,408) | (195,324) | 10,000 | 3,650,000 | 1,158,290 | 20,850 | 3,433,047 | 1,342,711 | (0.15) |

| Cincinnati G & E load growth (inc. affiliates) (1965 report to stockholders) | | | Ohio Fuel load growth (exhibit 32) | | | Annual inc. | |
|---|---|---|---|---|---|---|---|
| Year | Annual sales-Mcf | Annual increase-Mcf | Year | Peak day Mcf | Annual sales Mcf | Peak day | Annual volumes |
| 1956 | 63,559,000 | | 1964 act | | 368,207,585 | | |
| 1957 | 67,973,000 | 4,414,000 | 1965 est | 2,492,800 | 387,348,799 | | 19,141,214 |
| 1958 | 72,686,000 | 4,713,000 | 1966 est | 2,577,600 | 404,190,200 | | 16,841,401 |
| 1959 | 76,221,000 | 3,535,000 | 1967 est | 2,668,200 | 415,768,700 | | 11,578,500 |
| 1960 | 81,393,000 | 5,172,000 | 1968 est | 2,742,600 | 432,442,300 | | 16,673,600 |
| 1961 | 84,790,000 | 3,397,000 | 1969 est | 2,822,000 | 445,608,600 | | 13,166,300 |
| 1962 | 88,029,000 | 3,239,000 | | | | | |
| 1963 | 89,885,000 | 1,856,000 | Total | | 2,453,566,184 | 5 yrs | [3] 77,401,015 |
| 1964 | 95,518,000 | 5,633,000 | Avg | | 408,927,697 | | |
| 1965 | 98,487,000 | 2,969,000 | | | | | |
| Total | 818,541,000 | 34,928,000 | | | | | |
| | [1] 81,854,100 | [1] 3,492,800 | | | | | |
| | | [2] 4.27 | | | | | |

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[1] Average per year (Hamilton load for 1968—4,810,816 Mcf).

[2] Percent average per year.

[3] (15,480,200 average per year; 3.79 percent average per year.)

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP67-130

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1967)

On November 7, 1966, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP67-130 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act as implemented by Section 157.7(b) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and operation of certain natural gas facilities for the purchase and gathering of natural gas in the general area of Applicant's system, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate routine field facilities to be located upstream from its main transmission system and mainline taps to enable it to receive and take into its mainline system new or additional volumes of gas purchased by United Fuel Gas Company (United Fuel) from independent producers in the general area of Applicant's system and to transport and deliver such gas to United Fuel at points near the Kentucky-West Virginia border, as a part of the transportation service it now renders under existing authorization.

The total estimated cost of Applicant's proposed facilities will not exceed $500,000, with the cost of any single project not to exceed $125,000. Such costs will be financed from current funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed herein.

At a hearing held on January 19, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued on November 5, 1958 in Docket No. G-15524 (20 FPC 681).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Columbia Gulf Transmission Company, to construct during the calendar year 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to United Fuel Gas Company for transportation by Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $500,000, with no single project to exceed a cost of $125,000.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NOS. CP67-54 AND CP67-55

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1967)

On September 7, 1966, El Paso Natural Gas Company (Applicant) filed, with respect to its Northwest Division, in Docket No. CP67-54 and, with respect to its Southern Division, in Docket No. CP67-55, applications pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for certificates of public convenience and necessity authorizing the construction, during the calendar year 1967, and the operation of natural gas facilities for the sale and delivery of natural gas to existing authorized distributors for resale, and, also, in Docket No. CP67-54, the sale and delivery of natural gas to such distributors by means of facilities to be constructed, during the calendar year 1967, and operated by Pacific Gas Transmission Company (Pacific Gas) [1], but paid for by Applicant. Applicant will also utilize certain of the proposed facilities to establish new delivery points for existing customers and to accomplish miscellaneous rearrangements through conversion of existing taps to measuring and regulating stations.

Applicant's proposals are more fully set forth in the applications in these proceedings.

Applicant states that it has filed the subject separate applications for its Northwest Division and its Southern Division in consideration of the forthcoming divestiture of Applicant's Northwest Division facilities to Northwest Pipeline Corporation, as ordered by the United States Supreme Court.[2]

In Docket No. CP67-54, for service to its Northwest Division customers, Applicant proposes to construct a maximum of twenty taps, twenty measuring and regulating stations, and three lateral or loop pipelines not to exceed a maximum diameter of 8-5/8-inches and a maximum length of twelve miles, all together with standard appurtenances necessary for the respective operation of said facilities. The total estimated cost of the proposed maximum facilities in Docket No. CP67-54 is $300,000, which cost will be financed from current working funds.

In Docket No. CP67-55, for service to its Southern Division customers, Applicant proposed to construct a maximum of thirty taps, twenty-five measuring and regulating stations, and three lateral or loop pipelines not to exceed a maximum diameter of 8-5/8-inches and a maximum length of twelve miles, all together with standard appurtenances necessary for the respective operation of said facilities. The total estimated cost of the proposed maximum facilities in Docket No. CP67-55 is $300,000, which cost will be financed from current working funds.

In each of the subject applications, Applicant states that natural gas deliveries to any one customer will not exceed 100,000 Mcf annually, and that such gas will not be sold or resold for boiler fuel purposes.

The total estimated cost of maximum facilities proposed in Docket Nos. CP67-54 and CP67-55 is $600,000 and, therefore, exceeds the cost limitation of $300,000 imposed by Section 157.7(c)(3) of the Commission's Regulations. Accordingly, Applicant requests that said cost limitation be waived.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on January 19, 1967, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record.

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[1] By order issued August 5, 1960, in Docket No. G-17350, *et al.* (24 FPC 134) Pacific Gas was authorized to transport for the account of Applicant natural gas purchased by the latter from Westcoast Transmission Company, Limited at a point on the international boundary near Kingsgate, British Columbia. Deliveries of gas so transported are made by Pacific Gas at delivery points specified by Applicant along Pacific Gas' system in the States of Idaho, Washington and Oregon. By order issued April 6, 1962, as amended, in Docket No. CP62-59 (27 FPC 671), Pacific Gas was authorized to construct and operate taps and metering facilities at points of delivery specified by Applicant and where Applicant has been authorized to sell gas.

[2] See the application of Applicant in Docket No. CP66-27 and the applications of Northwest in Docket Nos. CP66-28, CP66-29 and CP66-30.

*The Commission finds:*

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944 in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the applications in these proceedings, are proposed to be used in the transportation and/or sales of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and/or sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and/or sales of natural gas by Applicant are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorizations hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities thereunder should be limited to a maximum of $600,000 (a maximum of $300,000 in each of the subject dockets), with the total deliveries to any one customer in either docket not to exceed a maximum of 100,000 Mcf of natural gas per year and not to be used by the distributor or consumer for boiler fuel purposes.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit in each of the subject dockets within 60 days after the expiration of the authorizations granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

(9) Good cause has been shown for waiver of the cost limitations set forth in Section 157.7(c)(3) of the Commission's Regulations under the Natural Gas Act.

*The Commission orders:*

(A) Upon the terms and conditions of this order, certificates of public convenience and necessity are issued authorizing Applicant, El Paso Natural Gas Company, in Docket Nos. CP67–54 and CP67–55 to construct, during the calendar year 1967, the proposed facilities hereinbefore described, as more fully described in the applications in these proceedings, and to operate such facilities for the transportation and/or sales of natural gas and for miscellaneous rearrangements, all as provided by Section 157.7(c)(1) of the Commission's Regulations, and, in Docket No. CP67–54, to sell natural gas to distributors for resale by means of facilities to be constructed and operated by Pacific Gas, all as hereinafter provided.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) The authorizations granted in paragraph (A) above are limited to construction during the calendar year 1967 and the total expenditures for facilities thereunder are limited to a maximum of $600,000 (a maximum of $300,000 in each of the subject dockets), with the total deliveries to any one customer in either docket not to exceed a maximum of 100,000 Mcf of natural gas per year and not to be used by the distributor or consumer for boiler fuel purposes.

(D) Applicant shall submit in each of the subject dockets within 60 days after the expiration of the authorizations granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificates issued by paragraph (A) above are expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, the certificates are granted upon the express condition that any interruptible service which may result therefrom shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) These certificates shall not entitle any industrial customers to whom firm deliveries may be authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(G) The cost limitations set forth in Section 157.7(c)(3) of the Commission's Regulations under the Natural Gas Act are waived.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## LANDS WITHDRAWN IN POWER SITE RESERVE NO. 66, DOCKET NOS. DA-520 AND 528-OREGON, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

### FINDING AND ORDER MODIFYING ORDER UNDER SECTION 24 OF THE FEDERAL POWER ACT

(Issued January 25, 1967)

Application was filed on July 21, 1966 by the Bureau of Land Management (Applicant), Department of the Interior, for reconsideration of the Commission's March 29, 1966, 35 FPC 434, order in *Docket No. DA-520-Oregon*, in which we denied Applicant's application for a determination under Section 24 of the Federal Power Act for the purpose of restoring the following described lands of the United States withdrawn for power purposes:

Willamette Meridian, Oregon
T. 6 S., R. 13 E., sec. 24: E½SE¼NE¼
T. 6 S., R. 14 E., sec. 19: lots 17 and 18
(part of former
lots 1 and 10)
(50.10 acres)

Applicant again seeks restoration of the above-described lands to permit an exchange of those lands for other lands owned by the Deschutes Home Owners Association, Inc. (or, members of the Association) which are more accessible to public roadways and which have a much larger river frontage. Applicant proposes to use the land it would acquire through the exchange for recreational development.

The lands for which restoration is sought lie on the west bank of the Deschutes River at the Community of Dant, Oregon. They would be flooded in part should either the downstream Frieda site or the downstream Maupin site be developed for power and other purposes. Although not proposed for immediate development the sites are potential power sites as set forth in findings of the U.S. Geological Survey and the U.S. Corps of Engineers.

On July 29, 1947, 6 FPC 815, in *Docket No. DA-358-Oregon*, the Commission made a Section 24 determination with respect to the subject lands, and other lands, for mining purposes only, pursuant to which the lands were restored to entry for mining purposes only, by Restoration Order No. 1236 of November 7, 1947, and were occupied by the mining company for its supervisory personnel. When mining operations ceased the houses on the subject lands were sold to individuals presently comprising the membership of the Deschutes Home Owners Association, Inc., who now seek title to the lands. The Commission's Section 24 determination in DA-358-Oregon, provided in part that "if and when the lands are required wholly or in part for purposes of power development, any structures, machinery, or improvements placed thereon which shall be found to interfere with such [power] development shall be removed or relocated as may be necessary to eliminate interference with the power development without expense to the United States, its permittees or licensees.

By letter dated July 20, 1966, Bureau of Land Management advised that the Deschutes Home Owners Association, Inc. and the individual home owners are willing (1) that the power values of the lands be reserved to the United States, (2) that the use of the lands be governed by restrictions as may be imposed by the Commission, (3) that the Government be held free from any damage by reason of flooding of the lands for power purposes, and (4) that further capital improvements be constructed only with the specific consent of the Federal Power Commission. On October 5, 1966 in further support of the request Applicant advised that "If the exchange in the instant case were to be consummated, the restrictions listed in the 4 categories of our July 20 letter would be inserted in the patent . . . in addition to any further requirements that the Federal Power Commission may stipulate."

Our further review and study of this matter convinces us that the subject lands have power value which should be protected. However, in view of the aforementioned proposal that any patent issued for the subject land will contain the 4 restrictions listed in the Bureau's July 20, 1966 letter, we are modifying our March 29, 1966 action in DA-520-Oregon, as hereinafter provided.

*The Commission finds:*

Inasmuch as there are no present plans for the development of the subject lands for power purposes, it has no objection to the cancellation or revocation of Power Site Reserve No. 66 insofar as it pertains to the subject lands provided the Secretary of the Interior imposes in any patent covering the subject lands the aforesaid restrictions to permit the United States, its licensee or permittees, to utilize the subject lands at any time in the future for power and other purposes without cost to the United States its licensees or permittees.

*The Commission orders:*

The Commission's aforementioned March 29, 1966 order in Docket No. DA-520-Oregon is hereby modified to conform to our finding herein.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-49

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1967)

On August 31, 1966, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-49 an application and an amendment thereto on January 3, 1967, pursuant to Section 7(c) of the Natural Gas Act for authority to install and operate certain compression facilities to enable Applicant to meet existing gas purchase obligations in Ochiltree County, Texas, all as more fully set forth in the application and amendment thereto.

Applicant requests authority to install and operate two 1,000 H.P. reciprocating compressors and appurtenant facilities. Applicant states that the units are needed to offset declining wellhead pressures and to enable it to meet existing gas purchase obligations in Ochiltree County, Texas.

The total estimated cost of the proposed facilities is $653,770, which cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 19, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943 in Docket No. G-280 (3 FPC 967).

(2) The proposed installation and operation of facilities, as hereinbefore described and as more fully described in the application, amendment and exhibits, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed installation and operation of facilities is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the installation and operation of facilities, as hereinbefore described and as more fully described in the application, amendment thereto and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be installed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act by April 1, 1967.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-140

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1967)

On November 14, 1966, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-140 a "budget-type" application and an amendment thereto on December 5, 1966, pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and operation of facilities for the connection of additional natural gas supplies to its interstate pipeline system, all as more fully set forth in the application.

Applicant requests authority to transport and receive into its main pipeline system natural gas which may become available from new and existing producing fields in the general area of its system, and to construct and operate miscellaneous compressor and pipeline facilities to connect such supplies to its system and to maintain the deliverability of existing supplies.

The total estimated cost of the proposed facilities will not exceed $2,000,000, and the total cost of any single project will be limited to a maximum of $500,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 19, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943 in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application and amendment in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to construct during the calendar year 1967 the proposed facilities hereinbefore described, as more fully described in the application and amendment in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E-7325

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued January 25, 1967)

Northern States Power Company (Applicant) on November 14, 1966, filed an application with the Federal Power Commission seeking an order pursuant to

Section 203 of the Federal Power Act authorizing it to sell certain electric distribution facilities to Wright-Hennepin Cooperative Electric Association (Wright-Hennepin) and to purchase certain electric distribution facilities from Wright-Hennepin.

Applicant is incorporated under the laws of the State of Minnesota and is authorized to do business in the States of North Dakota and South Dakota with its principal place of business at Minneapolis, Minnesota. Applicant owns and operates utility properties and furnishes electric service at retail in 424 communities and adjacent territories and electric energy at wholesale for resale to 28 additional communities and to eight other utility companies. Of the 452 communities so served, 399 (including Minneapolis and St. Paul) are located in Minnesota, 18 in North Dakota, 35 in South Dakota.

Wright-Hennepin owns and operates a cooperative distribution system serving rural areas and small communities in Wright and Hennepin Counties, Minnesota. It has no generating facilities and purchases its entire energy requirements from Rural Cooperative Power Association, a "Generation and Transmission" cooperative which supplies energy to six member distribution cooperatives. In 1965 Wright-Hennepin delivered 50,725,527 kwh to 7722 retail customers.

Applicant and Wright-Hennepin signed an agreement on August 26, 1966 to exchange certain electric facilities. Applicant will sell to Wright-Hennepin 32.4 pole line miles of 12.5 kv, 7.5 kv and 7.2 kv distribution line serving 223 retail customers. Applicant will buy from Wright-Hennepin 8 pole line miles of 12.5 kv and 7.2 kv distribution line serving 69 retail customers. There will be no change in the use of the facilities after the exchange.

The facilities in question are all located in Hennepin County, Minnesota. The distribution lines that Applicant will sell to Wright-Hennepin are located principally in western Hennepin County and serve rural areas and small villages. The distribution lines that Applicant will acquire are located in eastern Hennepin County near Minneapolis and serve a few customers in incorporated communities where Applicant is also providing service.

The facilities to be sold by the Applicant have an estimated original cost depreciated of $83,544. These facilities are to be sold by the Applicant to Wright-Hennepin for $152,400. On the books of the Applicant, this consideration of $152,400 for facilities which have an estimated original cost depreciated of $83,544, will result in a gain of $68,856. The Applicant proposes to credit this amount to Account 421, Miscellaneous Nonoperating Income.

The facilities to be purchased by the Applicant have an estimated original cost depreciated of $19,852. These facilities are to be acquired by the Applicant for $56,495. On the books of the Applicant, the payment of $56,495 for facilities which have an estimated original cost depreciated of $19,852, will result in the creation of an electric plant acquisition adjustment of $36,643. The Applicant proposes to debit this amount to Account 426, Other Income Deductions.

Of the 69 customers who will transfer from Wright-Hennepin to Applicant's system, 67 will have a total decrease in annual rates of $1,112 or 7.6%. Of the two remaining customers, one will have an increase in his annual rate of $2.87 or 2%; the other will have an increase of $1.23 or 0.8%.

If Wright-Hennepin's rates were applied to the 223 customers that will be transferred from Applicant, some would have an increase in rates others a decrease. However, Wright-Hennepin is planning to change its rate schedules to approximately the level of those charged by Applicant. Until these new rates are introduced, the 223 customers will continue on the rates they are now charged by Applicant.

Applicant represents that the transaction is in the public interest because the facilities to be acquired are in an area where urban development is taking place and where Applicant is equipped to advance such development through its industrial development personnel and to give the area promotional assistance. The Applicant also represents that the acquisition will eliminate future duplication of facilities which will be advantageous to all concerned.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission and to the Governor of that State. Notice was also published in the Federal Register on November 29, 1966 (31 F.R. 14997), stating that any person desiring to be heard or to make any protest with reference to said application should on or before December 22, 1966, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued September 1, 1955, *In the Matter of Northern States Power Company*, Docket No. E-6637 (14 FPC 946).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Wright-Hennepin, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

*The Commission orders:*

(A) The proposed acquisition of facilities by Applicant all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-145

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1967)

On November 21, 1966, Southern Natural Gas Company (Applicant) filed in Docket No. CP67-145 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the sale and delivery of natural gas on an interruptible basis to Atlas Tank Manufacturing Company, Inc. (Atlas), all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate a line tap and measuring station located at approximately M.P. 1.735 on Applicant's Vicksburg Harbor Project lateral line in Warren County, Mississippi.

The total estimated annual and peak day natural gas requirements of Atlas are 193,880 Mcf and 1,700 Mcf, respectively. Atlas has entered into a contract with Applicant, dated October 24, 1966, covering the proposed service.

The total estimated cost of Applicant's proposed facilities is $21,420, which cost will be financed from cash on hand.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on January 19, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942 in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas

Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) The certificate issued is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(E) The certificate issued by paragraph (A) above is conditioned upon Applicant filing with the Commission two copies of the October 24, 1966 contract with Atlas Tank Manufacturing Company, Inc., in accordance with Part 155 of the Commission's Regulations under the Natural Gas Act.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP67-93

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 25, 1967)

On October 12, 1966, United Gas Pipe Line Company (Applicant), filed in Docket No. CP67-93 an application and a supplement thereto on December 12, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the modification of metering facilities for the transportation and delivery of an additional 7,000 Mcf daily of natural gas to an existing industrial customer, all as more fully set forth in the application and supplement thereto.

Applicant proposes to sell and deliver additional volumes of natural gas to Southland Paper Mills, Inc. (Southland), near the City of Lufkin, Angelina County, Texas. In order to deliver the additional volumes Applicant requests permission to replace Emco regulators with Fisher Control Valves and modify header and valve arrangements at the existing meter station at Southland. No new pipeline is to be installed.

The estimated annual third-year additional deliveries is approximately 2,095,100 Mcf.

The total estimated cost of the proposed modification of facilities is $16,804.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on January 19, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation, having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942 in Docket No. G–232 (3 FPC 863).

(2) The proposed modification and operation of facilities and the transportation and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed modification and operation of facilities and the transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the modification and operation of facilities and the transportation and delivery of up to 37,000 Mcf per day of natural gas to Southland Paper Mills, Inc. of Angelina County, Texas, as described herein and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and g) of Section 157.20 of such Regulations.

(C) The certificate issued shall not entitle the industrial customer to whom firm delivery is authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(D) The modification of facilities authorized shall be completed and ready for operation within six months of the date of this order as required by Section 157.20(b) of the Regulations.

(E) Should Applicant fail to receive an adequate return or to recover out-of-pocket costs incurred in providing the direct sales of natural gas authorized herein, it shall not attempt to recover any part of the deficiency from jurisdictional sales customers.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65–49; UNITED FUEL GAS COMPANY, DOCKET NO. RP66–2; COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. RP66–22

### ORDER CONDITIONALLY APPROVING RATE SETTLEMENT AGREEMENT AND PRESCRIBING REFUNDS

(Issued January 26, 1967)*

There is before the Commission a motion filed by the above-named companies for approval of a Stipulation and Agreement for the settlement and termination of these consolidated proceedings. The motion and agreement were entered upon the record in prehearing conference on November 15, 1966, and were certified to us by the Presiding Examiner on November 30, 1966. The agreement, which is discussed below, provides, among other things, for reductions as of November 1, 1966, in the rates currently in effect subject to these proceedings and for refunds to be made back to January 1, 1966, in addition to flow-through of supplier refunds and rate reductions.

The proceeding in Docket No. RP65–49 was initiated by order of the Commission issued May 13, 1965. The order provided for hearing and suspended Atlantic Seaboard Corporation's (Seaboard) Eighth Revised Volume No. 1 to its FPC Gas Tariff tendered for filing on March 31, 1965. The tendered filing constitutes a restructuring of Seaboard's tariff and as stated by the company, the filing as a total "package" would reduce the rates and charges to each of its customers, in an amount aggregating approximately $2.6 million annually, based upon calendar year 1966 estimated sales.

The proceeding in Docket No. RP66–2 was initiated by order of the Commission issued September 14, 1965. The order provided for hearing and suspended United Fuel Gas Company (United Fuel) Sixth Revised Volume No. 1 to its FPC Gas Tariff tendered for filing on July 20, 1965. That filing, similarly, represented a restructuring of United Fuel's tariff and as a total "package" would reduce the charges to each of its jurisdictional customers, in an amount aggregating approximately $1.9 million annually, based upon estimated sales for the calendar year 1966.

The proceeding in Docket No. RP66–22 was initiated by order of the Commission issued March 22, 1966, 35 FPC 408. The order provided for an investigation into the rates and charges of Columbia Gulf Transmission Company (Columbia Gulf) for the transportation service which it renders to United Fuel. That order also consolidated the three proceedings for purposes of hearing and decision on the matters and issues involved therein.

Prehearing conferences on the record were held by the Presiding Examiner for the purposes of delineating the issues and providing for service of prepared testimony and exhibits. At such conference on September 14, 1966, after all parties except Columbia Gulf had served their direct cases, Respondents requested a recess for the purpose of informally discussing a settlement proposal with all parties.

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*Modified and rehearing denied by order issued March 7, 1967, 37 FPC 507.

On November 15th, after two months of intensive negotiations among parties with adverse interests, the Respondents proposed the Stipulation and Agreement referred to above. The Commission Staff disagreed with the proposal and outlined the issues that would be tried if the case proceeded to hearing. After Respondents agreed to further modifications of the proposed agreement, the Staff filed a statement on November 23, 1966, in support of the amended settlement, and recommended that the Commission accept it as amended.

All other parties participating in the informal conferences made statements on the record in support of the proposed settlement with the exception of Lynchburg Gas Company (Lynchburg) and the Coal Interests.[1] Washington Gas, Baltimore Gas and Electric, United Gas Improvement, Commonwealth and Dayton Power also filed written statements in support of the settlement agreement as amended.

The proposed settlement, as amended, may be summarized in principal part as follows:

(i) The revised rates set forth in Article XI to the stipulation and in the tariff sheets submitted therewith are to be effective as of November 1, 1966. Based upon test year sales, those rates result in an annual revenue reduction of approximately $3,376,491 to Seaboard and $5,430,466 to United Fuel below the revenues under the rates in effect immediately prior to the effective dates of their restructured tariffs, *i.e.*, May 16 and November 1, 1965, respectively.

The revised rates are based upon the costs of service shown on Appendices A, B, and C to the stipulation as computed by the Staff, except for depreciation accrual rates and consolidated tax savings. The Staff agreed that the depreciation accrual rate issue should be postponed for further study and consideration. The reservation of the consolidated tax savings issue as provided in the stipulation is discussed below.

(ii) Columbia Gulf, United, and Seaboard, effective as of January 1, 1966, will adopt "flow-through" accounting to reflect their use of liberalized depreciation, will reverse the accruals to Account 282 during the ten-month period January 1, 1966 through October 31, 1966, and will refund the jurisdictional portion to their resale customers. The immediate refunds applicable to that period amount to $3,280,032 by United Fuel and $1,938,163 by Seaboard. In addition, the costs of service and rates referred to in (i) above reflect the liberalized depreciation policies enunciated by the Commission in its *Alabama-Tennessee* Opinion No. 417.[2]

(iii) United Fuel and Seaboard will flow-through to their jurisdictional customers the proportionate share of supplier refunds received applicable to gas purchases prior to November 1, 1966, and supplier refunds relating to rates either in effect on November 1, 1966, or rates thereafter charged to customers by offset against supplier decreases.

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[1] The following interveners (not affiliated with Respondents) supported the settlement: Washington Gas Light Company; Baltimore Gas and Electric Company; United Gas Improvement Company (Philadelphia), Commonwealth Natural Gas Corporation; City of Charlottesville, Va.; Roanoke Gas Company; Dayton Power and Light Company; Cincinnati Gas and Electric Company; City of Cincinnati, Ohio; and four American Electric Power System affiliates, Appalachian Power Company, Kentucky Power Company, Ohio Power Company and Wheeling Electric Company. Other interveners who have participated in the formal conferences but take no position on the settlement are the Public Service Commissions of West Virginia and District of Columbia, and the Pennsylvania Public Utility Commission.

[2] *Alabama-Tennessee Natural Gas Co.*, 31 FPC 208, 768 and 928, affirmed *Alabama-Tennessee Natural Gas Co. v. F.P.C.*, 359 F. 2d 318 (CA5–1966), cert. denied, 385 U.S. 847 (1966).

(iv) United Fuel and Seaboard, in accordance with the detailed procedures set out in Article V to the stipulation, will make appropriate rate reductions to reflect any future decreases in the rates of their suppliers. In computing the effect of rate decreases by Louisiana and Appalachian suppliers, both increased and decreased rates by such suppliers effective after November 1, 1966, will be included. On a similar basis, United Fuel's cost of service herein reflects the net of a reduction in charges to it by Pan American Petroleum Corporation of approximately $2.2 million annually and increases by a number of suppliers aggregating about $787,000 annually. These changes became effective subsequent to the test period but prior to November 1, 1966.

(v) Seaboard agrees to continue to develop its underground storage to its ultimate capacity consistent with Commission authorization and to make its total underground storage capacity available under its Rate Schedule WS to the extent required to satisfy the requirements of its customers for such service. Seaboard and United Fuel, in the absence of unforeseen extenuating circumstances or changes in gas purchase costs, will not take unilateral action for a period of five years to decrease the differential between the CDS demand rate and the WS total demand rate or to revise the terms and conditions of the WS Rate Schedule.

(vi) The settlement costs of service include Federal income tax allowances computed on the basis of a combined corporate and surcharge rate of 48 percent. The settlement provides that United Fuel and Seaboard may file increased rates solely to reflect any increase in the corporate income tax rate, provided the legislation with respect thereto is enacted prior to January 1, 1968. The revised rates filed hereunder would be based on adjustments to the tax computations reflected in Appendices D, E, and F of the settlement and would become effective with the next billing after enactment of the legislation, but not sooner than the effective date of the tax change. If the income tax rate is reduced prior to January 1, 1969, the companies would file reductions in their rates to give effect to such decrease. The settlement also provides that Columbia Gulf would similarly adjust its charges to United Fuel. The adjustment in rates for changes in Federal income tax rate would be made in the companies' demand charges.

The President's State of the Union Message delivered to Congress on January 10, 1967, declares his intention to recommend a temporary surcharge of 6 percent, to be of indeterminate duration, which is to be calculated on the basis of the Federal income taxes payable under presently effective tax laws. In view of this new situation, we believe that the settlement agreement should be supplemented to permit similar incremental adjustments, based on the temporary surcharge, of the dollar amount of the Federal income tax allowances reflected in the appendices to that agreement. For the same reason, we believe that the provisions of the settlement agreement should be modified to reflect on an incremental basis any change in the Federal income tax rates or surcharge which occurs during the life of these settlement rates. In taking this action, we are not formulating any general policy.

(vii) As heretofore noted, the settlement provides that the issue relating to the treatment to be accorded consolidated tax savings is reserved. That reservation is made dependent upon the decision by the Supreme Court in the *United Gas* case.[8] Generally stated, the reservation provides that in the event the Supreme Court affirms the lower court's ruling in the *United Gas* case, the consolidated tax issue would be resolved in favor of the Respondents herein and no reduction in rates would be required with respect thereto. However, if the Supreme Court reverses or does not completely affirm the lower court, the costs of service and resulting demand charges would be modified, effective November 1, 1966, to reflect treatment of such tax issues consistent with the Court's opinion subject to a maximum rate of tax savings of 5 percent.

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[8] *F.P.C.* v. *United Gas Pipe Line Co.,* October Term, 1966, No. 127. This case is before the Supreme Court on certiorari granted to review the decision in *United Gas Pipe Line Co.* v. *F.P.C.,* 357 F. 2d 230 (CA5–1966).

The Commission is of the view that the proposed reservation with respect to consolidated tax savings is inappropriate. The facts which give rise to such tax savings in these proceedings are in substantial part different from the facts in the *United Gas* case. The major component of the consolidated tax savings to United Fuel and Seaboard (and the other jurisdictional companies in the Columbia Gas Systems) derives from the allocation of tax deductions arising primarily from interest expense incurred by the parent holding company as issues of debt securities for the system affiliates. That factor is not in issue in the *United Gas* case. Accordingly, while we agree that the consolidated tax savings issue may be reserved for consideration after the decision of the Supreme Court in the *United Gas* case, we conclude that the provision in the stipulation making the resolution of that issue dependent upon the decision in that case is not in the public interest. We shall condition our action herein accordingly.

Lynchburg in its comments on the record stated that it had certain specific questions regarding the settlement. Review of those comments discloses no clear statement that Lynchburg is opposed to the settlement or that it is requesting us not to approve it. Basically its questions relate to two items: (1) the Btu adjustment provision maintained on Seaboard's CDS commodity charge; and (2) its contention that the SR (Surplus) and EX (Excess) rate schedules are not in reality a substitution for the Authorized Overrun (AOS) rate schedule they are intended to replace.

Lynchburg is one of the customers of Seaboard which receives gas with a Btu content higher than the system average Btu content. Understandably, it would prefer rates without an accompanying Btu adjustment provision. Under the proposed adjustment provision the customers equally share the variance in Btu content which Seaboard delivers to them. Moreover, the proposed Btu clause, which eliminates the adjustment to the demand charges contained in Seaboard's prior tariff, represents a compromise between customers with diverse interests in such adjustment provision. Lynchburg has not shown that such compromise or the resulting Btu adjustment clause are unreasonable.

We are of the further view that Lynchburg's comments regarding elimination of the Authorized Overrun rate schedule are inapplicable at this time.

Seaboard's superseded tariff contained a 90 percent billing demand ratchet pursuant to which customers would be billed for not less than 90 percent of their contract demand if their takes of gas did not exceed that percentage. In the past Lynchburg and other customers were able to purchase authorized overrun gas because Washington Gas and Baltimore Gas were "holding the ratchet". The restructured tariff eliminates the ratchet and provides for billing at 100 percent of contract demand. Under the circumstances there is little doubt that Washington Gas and Baltimore Gas will take their full entitlement. Thus, only experience under the new tariff will reveal, some time in the future, whether Seaboard will have excess gas available in the winter months for purposes of authorized overrun gas.

We find no basis in Lynchburg's comments which would warrant disapproval of the proposed settlement.

Specific opposition to the proposed settlement has been voiced by the Coal Interests by their statement on the record and by a written answer to Respondents' motion. That opposition is directed to two features of the proposal: (1) elimination of the boiler fuel restriction clause; and (2) the level of Seaboard's commodity rate. In relation to the latter item Coal Interests also object to the provision that rate changes giving effect to changes in the Federal income tax rates will be applied to the demand component of Seaboard's rates.

The boiler fuel clause being eliminated by the restructured tariffs restricted the use by the distribution customer or the resale to any one ultimate consumer of gas for boiler fuel purposes to not more than 2,000 Mcf per day. That provision was approved by the Commission in Opinion No. 225 (11 FPC 43) on the representations that it was "principally required to permit the storage operations which are necessary to the most satisfactory operation of all of the Columbia Gas System companies" (11 FPC at 65). Under the restructured tariffs that protection of the storage field operations will be achieved through the WS (Winter Service) rate schedule, and increasingly so, as the customers' WS commitments equal storage deliverability. Coal Interests' objection to elimination of this provision seems to imply that the clause was included to foreclose competition with sale of coal or other fuels for boiler fuel purposes. As indicated, the facts are to the contrary.

Few, if any, other pipelines not associated with the Columbia System have any such self-denying restriction in their tariffs. We could not say as a matter of law that any such restriction is mandatory; on the contrary, as many of our previous decisions indicate, there may well be situations in which certification of sales for boiler fuel of more than 2,000 Mcf will be in the public interest. Of course, any such sale will have to be certificated by the Commission, and at such time, if the Coal Interests or anyone else can show they have standing to object, they may participate to show why they believe a sale would not be in the public interest. The evidence submitted by the Coal Interests in this proceeding, however, if relevant at all to this issue of boiler fuel sales, would be germane in such certificate proceedings and does not support any mandatory tariff prohibition.

We believe the Coal Interests' objection to the level of the commodity rates for United Fuel and Atlantic Seaboard are equally without merit. For whether we utilize the classification of costs previously followed by this Commission (see *Atlantic Seaboard Corp.*, 11 FPC 43) or the new "Actual Use Method" sponsored by the Staff herein, the commodity rates fixed by the settlement will, in addition to covering out-of-pocket expenses, make significant contributions to fixed charges. See *Midwestern Gas Transmission Co.*, Opinion No. 477, 34 FPC 973. Since this is true, and since all the customers of the two pipelines, regardless of whether they have low or high load factors, are agreeable to the proposal as part of a settlement which makes immediately effective other significant rate reductions and refunds which might otherwise not be available, we believe its approval, as a settlement, is appropriate. The possibility that the commodity charges so fixed might have a competitive impact upon the coal industry is irrelevant in determining whether the gas pipeline's rates are appropriate; as we stated on this subject in Opinion No. 430:[4]

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[4] Equally irrelevant, of course, would be the fact that the commodity rates of the two pipelines are here being significantly reduced, to the possible competitive disadvantage of the Coal Interests, as the result of flow-through of liberalized depreciation in accordance with the principles of our decision in *Alabama-Tennessee, supra*. Coal Interests' subsidiary objection to the settlement provision that any rate increases to reflect changes in Federal income taxes will be applied to the demand component of Seaboard's and United's rates, must fall for the same reasons.

> * * * the effect of a rate reduction upon the coal industry, as such, is not a relevant consideration in determining whether a proposed rate change meets the standards of Sections 4 or 5 of the Natural Gas Act * * *

See also *Northern Natural Gas Co.*, 28 FPC 1155, affirmed *Mid-America Pipeline Co.* v. *F.P.C.*, 330 F. 2d 226 (CADC–1964).[5]

The question remains whether, assuming that the proposed settlement warrants our approval on its merits, we are legally authorized to do so in view of the status of the proceeding and the objections of Lynchburg and the Coal Interests. It is established law that the Commission has virtually unreviewable discretion in deciding whether a rate change filed under Section 4 of the Act is to be allowed to go into effect or suspended and set for hearing.[6] But in *Minneapolis Gas Co.* v. *F.P.C.*, 294 F. 2d 212 (CADC–1961), the Court of Appeals for the District of Columbia reversed a Commission order which, after hearing on a suspended increased rate and an examiner's decision holding the sponsoring natural gas company had not met its burden of justifying it, dismissed the proceeding. The Court, characterizing the order as "the equivalent of a *nunc pro tunc* determination not to enter upon a hearing but to let the rates go into effect without a determination as to their lawfulness" (294 F. 2d at 215) made clear that (*ibid*):

> * * * We do not have before us, and therefore do not decide, whether the Commission may terminate a proceeding, once entered upon, at some point prior to the conclusion of the evidentiary hearing. A change of mind, midstream so to speak, may or may not be permissible. But we are of the opinion that the Commission, having received all the evidence the parties wished to present, and having before it an Examiner's findings, conclusion and decision, cannot at that point change its mind, wiping out the hearing as though it had never occurred, and in effect decide it will not enter upon a hearing * * * It seems to us that the statute requires the Commission to make an early choice between its discretion and the binding necessities of a decisional process. It cannot, we think pursue one course almost to the end and then protest its last step by reverting to its discretionary power * * *

Subsequent decisions by the District of Columbia and other Courts of Appeals have made clear that in fact there are a variety of situations in which a rate hearing may, for good cause shown, be aborted before completion. See *Eastern Air Lines, Inc.* v. *Civil Aeronautics Board*, 294 F. 2d 235 (CADC–1961), cert. den., 368 U.S. 927 (Board may terminate general passenger fare investigation without determining justness and reasonableness of rates, *after* hearing, examiner's decision, exceptions and oral arguments); *Wisconsin* v. *F.P.C.*, 303 F. 2d 380, 386 (CADC–1961), affirmed 373 U.S. 294, 308–314, *cf.*, *Brandenfels* v.

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[5] The apparent anomaly that competitive injury to coal or fuel oil or LPG from a low gas rate is not grounds for setting it aside, whereas competition from one of these sources could justify a lower commodity rate for gas sales than might otherwise be appropriate presents a false dichotomy. For in the latter case it is the injury to the other gas customers of the pipelines which would result from a loss of sales which will make a significant contribution to fixed charges rather than the competitive position of the gas pipeline, as such, which is determinative. There is no discrimination here; if coal was regulated it would similarly be permitted to charge rates low enough to meet competition as long as they yield a return on investment, and since coal is not regulated it can make even lower charges if it sees fit.

[6] See *Texas Gas Corp.* v. *F.P.C.*, 250 F. 2d 27 (CADC–1957); *Columbian Fuel Corp.* v. *F.P.C.*, 239 F. 2d 61 (CADC–1956); *Humble Oil & Refining Co.* v. *F.P.C.*, 236 F. 2d 819, 822–23 (CA5–1956); *Luckenbach Steamship Co., Inc.* v. *United States*, 179 F. Supp. 605, 608–611 (D. Del., 1959) and cases cited; *Coastwise Line* v. *United States*, 157 F. Supp. 305 (N.D. Cal., 1957); *Antioch Milling Co.* v. *Public Service Company of Northern Illinois*, 4 Ill. 2d 200, 123 N.E. 2d 302, 307 (S. Ct. Ill., 1954).

*Day*, 316 F. 2d 375, 379–380 (CADC–1963). Most important to the present situation is the decision of the Court of Appeals for the Fourth Circuit in *Lynchburg Gas Co.* v. *F.P.C.*, 295 F. 2d 109, 119–122 (1961),[7] noted with approval by the District of Columbia Circuit in *Brandenfels* v. *Day, supra.* For this case deals with the settlement situation also presented here.

In *Lynchburg* rate increases by United Fuel, one of the pipelines whose rates are also involved here, had been suspended and set for hearing. Prior to the commencement of an evidentiary hearing, however, a staff field investigation had been conducted, the results of which had been made available to all parties and interveners. There followed a number of conferences, open to all parties, at which these studies and other "voluminous cost data compiled by the staff, as well as data supplied by United Fuel, were made available, examined, and discussed. Some of the parties also examined books and records of the United Fuel Co. at its office." (295 F. 2d at 120). On the basis of this material all parties but Lynchburg, a customer of United Fuel's affiliated customer Seaboard, entered into a settlement of most of the issues (a liberalized depreciation issue was reserved).

Lynchburg on appeal asserted the *Minneapolis Gas* decision precluded a decision where it as a party objected to the settlement. The Court disagreed. It pointed out initially that this claim was inconsistent with the provisions of Section 5(b) of the Administrative Procedure Act favoring settlement, stating (295 F. 2d at 121): "there is nothing in the Administrative Procedure Act which expressly requires unanimous consent of all the participating parties to an agreement of settlement; and to read such a contention into the statute in view of the countless state agencies, municipalities, and consumers who may be interested in an administrative proceeding would effectively destroy the settlement provision". The "kind of interest" Lynchburg was entitled to represent, the Court felt, was protected by the consent of the other parties in like situation. As to the alleged conflict with *Minneapolis Gas*, the Court, pointing to the language in *Minneapolis* cited above, stated (295 F. 2d at 122): "There is nothing in this decision [*Minneapolis Gas*] which suggests that the Commission must go through with a formal hearing simply because it announces at the time a proposed rate is suspended that a hearing will be had * * * Thus it is obvious that the decision of the Court furnishes no basis for Lynchburg's contention in this case; and we are confident that the Court of Appeals for the District of Columbia had no intention to weaken the force and effect of the salutory provision of the Administrative Procedure Act which permits agreement without hearing."

The present case differs from *Lynchburg* in several respects, none of which we think call for a different result. In *Lynchburg*, there had been no evidentiary hearing but a field study and other available information was considered, here there has been no evidentiary hearing but direct written cases for the various parties have been submitted. We believe the status of the two cases is approximately the same. In *Lynchburg*, the petitioner apparently did not challenge the reasonableness of any specific facet of the settlement with which it disagreed; here the complainants have to the extent noted. This in our opinion does not destroy the possibility of a settlement but merely indicates that the Commission must direct itself, as we have done above, to the merits of the controverted issues in the light of the material before it, here, the direct evidence submitted by the various parties. Finally, the fact that the Coal Interests, unlike Lynchburg in the case of that name may have a different "kind of interest" than the other parties who participated in the proceeding and agreed to the settlement cannot be determinative. For as we have seen Coal's interest, as a party who might be adversely affected economically by the proposed rate, while arguably sufficient to give it standing as a kind of "private attorney general",[8] is not itself entitled to protection as part of our substantive determination of the propriety of the rates in issue. In other words the substantive interests Coal may have standing to protect are those of the customers of the pipelines here involved, and the ultimate consumers of gas, and these interests in the words of the *Lynchburg* case, were "protected by the participation and consent of other parties" (295 F. 2d at 121), and, we may add, by the Commission in its present consideration of the settlement.

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[7] In the volumes of the reporter this case is listed under the style of the companion case *Cities of Lexington, etc., Ky.* v. *F.P.C.*

Upon the basis of the foregoing discussion, the present record in these proceedings, the substantial rate reductions and refunds, the number and extent of the competitive certificate proceedings involving Respondents in which rate level is an important factor, we conclude that the proposed Stipulation and Agreement, as modified, is in the public interest and should be accepted and approved as hereinafter provided.

*The Commission finds:*

(1) The settlement of these consolidated proceedings on the basis of the Stipulation and Agreement offered on the record on November 15, 1966, as modified by the Respondents' by letter to all parties dated November 23, 1966, is reasonable, proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective subject to the terms and conditions hereinafter ordered.

(2) Good cause exists for waiving the requirements of Part 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets listed in Appendix G to the Stipulation and Agreement may become effective as of November 1, 1966, as hereinafter provided.

*The Commission orders:*

(A) The provisions of Part 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and the revised tariff sheets tendered for filing as Appendix G to the above-described Stipulation and Agreement are accepted for filing to become effective as of November 1, 1966.

(B) The Stipulation and Agreement offered on the record on November 15, 1966, as modified on November 23, 1966 (incorporated herein by reference and made a part of this order), and as further modified, is approved and made effective, subject to the terms and conditions of this order.

(C) The provisions of Article II, (C) of the proposed Stipulation and Agreement are modified insofar as they make the final disposition of the treatment to be accorded consolidated tax savings dependent upon the decision of the Supreme Court in the pending *United Gas* case[9] and limit the maximum rate of such tax savings to 5 percent and these two issues are reserved for independent decision in a separate proceeding to be instituted by subsequent order of the Commission.

(D) Columbia Gulf, United Fuel, and Seaboard shall file with the Commission within 10 days from the date of this order, in writing over the signature of a responsible officer, and under oath, an original and one copy of their acceptance or rejection of the terms and conditions of this order.

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[8] See *F.C.C.* v. *Sanders Brothers Radio Station*, 309 U.S. 470 (1940); *Associated Industries* v. *Ickes*, 134 F. 2d 694, 705 (CA2–1943).

[9] Cited *supra*, page 246.

(E) Seaboard and United Fuel shall comply with each of the provisions of the Stipulation and Agreement, as amended, relating to refunds and future rate reductions.

(F) Prior to the distribution of any refunds required by the provisions of the Stipulation and Agreement, as modified, Seaboard and United Fuel shall each file a report with the Commission setting forth the amount to be refunded to each customer and the billing determinants used in computing such refunds. A copy of each report shall be served on each customer and interested State commission. Seaboard and United Fuel shall retain the amounts to be refunded pending further action by the Commission, prescribing the disposition of such refunds. The provisions of Articles VI and IX of the proposed Stipulation and Agreement are modified, insofar as they are inconsistent with the requirements of this paragraph respecting the retention of refundable amounts, the determination of equitable entitlement to such refunds, and their ultimate disposition in accordance with our further order and, also, insofar as they purport to entitle Seaboard and United Fuel to receive and/or retain refunds relating to supplier rate increases made effective on or after November 1, 1966. Such modification of the terms of the settlement agreement shall be without prejudice to the rights of all parties to litigate before the Commission and the courts the legal and policy issues raised by the Commission's refund retention and equitable entitlement procedures.

(G) Article II, (A) of the proposed Stipulation and Agreement is modified in accordance with the provisions of this paragraph. Any change in Federal corporate income tax rates or any new or changed surcharge payable on taxes calculated under presently effective laws, which occurs during the life of these settlement rates, shall be reflected by incremental upward and downward adjustments in the rates and charges of Columbia Gulf, United Fuel and Seaboard.

(H) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims which may be made by the Commission, by any of the Respondents herein, the Commission Staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against either of the Respondents herein or any other persons or parties affected by this order.

Commissioner Ross *dissenting in part.*

Ross, *Commissioner, dissenting in part:*

An administrative agency's natural desire to get on with the job and to make available to the consuming public the benefits of reduced settlement rates is laudable. In such a situation, it is only natural to resist any attempts by objecting parties to foul up the works. Such parties soon are cast as the "villains" or "bad guys" to be disposed of as quickly and quietly as administrative convenience will allow. Nonetheless, the Coal Intervenors, in my opinion, have a "kind of interest" different from that of the other parties to this proceeding, as described by the Court in *Lynchburg Gas Co.* v. *F.P.C.*, 295 F. 2d 109, 119–122. Therefore, to approach a settlement of this case without allowing the Coal Intervenors a reasonable opportunity to question the propriety of the settlement rates in a hearing offends my sense of fair play.

In view of the recent trend towards merger of coal and natural gas companies, a trend which raises serious policy issues, I believe that this Commission should lean over backwards to enable the Coal Intervenors to develop a record which would help us determine intelligently whether there is in fact fair competition between these important competing fuel interests.

The majority's contrary conclusion is predicated on its holding that this Commission is not concerned, and should not be concerned with the impact of gas rates upon competitive fuels. Thus, while the majority is willing to consider the impact of coal prices in setting gas rates, it refuses to consider the impact of proposed gas rates on coal. In this dynamic age where the public can profit tremendously from rational interfuel competition, I cannot concur with this one-sided view of our responsibilities to the public.

Accordingly, I would approve the settlement except for the limited issue of the appropriate level of the pipelines' commodity rates, which should be remanded for hearing, as the Examiner has recommended.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CHATANIKA POWER CO., INC., PROJECT NO. 2264

### ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued January 26, 1967)

On June 30, 1960 we issued a license to Chatanika Power Co., Inc., of Fairbanks, Alaska, 23 FPC 911, for the then proposed Project No. 2264 located on Chatanika River, Fourth Judicial Division, Alaska, in the vicinity of Chatanika, and affecting lands of the United States.

Article 36 of the license, as amended by our order issued November 22, 1961, 26 FPC 753, required the licensee to provide a minimum flow of 2 cfs or natural runoff (whichever is less) in Belle Creek and a minimum of 5 cfs or the natural runoff (whichever is less) in Sourdough Creek from spring thaw until freezeup. Article 30 of the license required the licensee to consult and cooperate with the U.S. Fish and Wildlife Service, and the Alaska Department of Fish and Game in determining a mutually satisfactory study program covering a period not to exceed five years to determine more precisely such additional measures and modifications necessary to maintain the fishery resources of the area affected by the program.

By letter dated February 2, 1966, we are advised by the Department of the Interior that in compliance with Article 30 of the license, a two-year contract was let by the licensee in July 1962 to the University of Alaska to conduct basic life history studies on grayling fish on the Chatanika River, with emphasis on those aspects pertinent to water development projects; that the studies, supplemented with observations by the U.S. Fish and Wildlife Service, have revealed the need for further amendment of Article 26 to assure the protection late in the fall of migrating grayling that now are susceptible to loss in Sourdough lateral and the ditch system; and, finally, that since the studies required by Article 30 have been completed, the latter article should be deleted from the license.

In response to our February 17, 1966 letter concerning these matters the licensee by letter dated February 24, 1966, advised that the proposed further amendment of Article 26 and the deletion of Article 30 are acceptable to the licensee.

*The Commission finds:*

The license for Project No. 2264, further amended as hereinafter ordered, will not interfere or be inconsistent with the purposes of any reservation or withdrawal of public lands, and is in the public interest.

*The Commission orders:*

(A) The license for Project No. 2264 is hereby further amended as follows:

*PARAGRAPH I.* Article 26 of the license is amended to read:

*Article 26.* The licensee shall provide a minimum flow of 2 cfs or the natural runoff (whichever is less) in Belle Creek from spring thaw until freezeup and a minimum flow of 5 cfs or the natural runoff (whichever is less) in Sourdough Creek from spring thaw through September 15. During the period September 16 through December 31 each year no water shall be diverted by the licensee from Sourdough Creek.

*PARAGRAPH II.* Article 30 of the license is deleted therefrom.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## FRANK E. PEACOCK AND WOODS FALLS B HYDRO, INC., PROJECT NO. 2427

### ORDER APPROVING TRANSFER OF LICENSE (MAJOR)

(Issued January 26, 1967)

On August 25 and December 9, 19, 21 and 28, 1966, Frank E. Peacock, licensee for Project No. 2427, and Woods Falls B Hydro, Inc. of Wilmette, Illinois, filed application pursuant to Section 8 of the Federal Power Act (Act) for Commission approval of the transfer of the license for the project from the former to the latter. The project, which is unconstructed, is located on the Black River in Jefferson County, New York.

The license for the project is for a period effective as of October 1, 1965, and terminating December 1, 1999.

Public notice of the application has been given. No protests or petitions to intervene have been received.

*The Commission finds:*

(1) The proposed transferee is a corporation organized under the laws of the State of Illinois and is authorized to do business in the State of New York, and has submitted as partial evidence of its compliance with all applicable State laws as required by Section 9(b) of the Act, a permit issued by the

State of New York Water Resources Commission, to construct a dam on the Black River.

(2) Approval of transfer of the license for Project No. 2427 to the proposed transferee, upon the conditions set forth herein, will not be inconsistent with the public interest.

*The Commission orders:*

(A) The transfer of the license for Project No. 2427 from Frank E. Peacock to Woods Falls B Hydro, Inc. is hereby approved, effective as of the date of issuance of this order, subject to Section 9.3 of the Commission's Regulations under the Federal Power Act, including the condition that the transferee shall be subject to all the provisions and conditions of the Act to the same extent as though it were the original licensee for the project.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for Woods Falls B Hydro, Inc. and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Carl E. Bagge.

## TURNBULL & ZOCH DRILLING CO. (OPERATOR), ET AL., DOCKET NO. G-17960, ET AL. AND TENNECO OIL COMPANY, DOCKET NOS. G-18223, CI60-325

### ORDER DISMISSING APPLICATION FOR REHEARING

(Issued January 27, 1967)

On July 25, 1966, 36 FPC 164, the Commission issued Opinion No. 499 and order in this proceeding. Timely applications for rehearing were filed by a number of the parties to the proceeding. On August 25, 1966, the thirty-first day after issuance of Opinion No. 499 and order, Tenneco Oil Company (Tenneco) filed an application for rehearing. By order issued September 2, 1966, the Commission granted all applications for rehearing of Opinion No. 499 and order for the purpose of allowing an opportunity to give the arguments set forth therein joint and adequate consideration. By letter dated September 8, 1966, the Acting Secretary of the Commission rejected Tenneco's application for rehearing on the grounds that it was not filed within 30 days, the time provided by Section 19(a) of the Natural Gas Act.

On September 16, 1966, Tenneco moved for reconsideration of its application for rehearing and for an extension of time for filing such application. By order of October 14, 1966, 36 FPC 762, the Commission denied Tenneco's motions, stating that the facts and arguments presented in Tenneco's motion papers would be considered on the merits in the course of the Commission's reconsideration of its prior order. On November 10, 1966, Tenneco filed an application for reheading of the aforesaid order of October 14, 1966. Tenneco contends that the Commission has power to extend the statutory period for filing an application for rehearing, and that any prior decision to the contrary was in error. Tenneco further argues that a delay of two days was occasioned in its filing because Commission files were not available.

Tenneco claims it was not able timely to complete its application for rehearing due to its inability for a short period of time to obtain from the Commission's Public Reference room certain legal documents containing allegedly pertinent information relative to its proceedings.[1] However, Tenneco concedes that its counsel did not become aware that Tenneco was involved in Opinion No. 499 until three or four days prior to the due date for filing an application for rehearing and that its counsel did not determine the need to examine the Commission files until one day before the deadline (allegedly because the records pertaining to Tenneco's dockets were almost non-existent among the records obtained from Delhi-Taylor Oil Co.).

Even assuming that we had the power to extend the time limit, the circumstances set forth by Tenneco would not justify such action. The basic cause for Tenneco's untimely filing was its failure to utilize to best advantage the full period authorized under the statute.

The 30 day period set forth in Section 19(a) for the filing of an application for rehearing is a jurisdictional time limitation which this Commission has no authority to extend.[2] Courts are under a similar limitation with respect to the 60 day period for petitioning for court review.[3] Petitions for review have also been dismissed where the petitioner did not file an application for rehearing within the 30 day statutory period.[4] It is thus clear that Tenneco's application for rehearing should be dismissed.

The cases cited by Tenneco provide no support for its position that the Commission has power to enlarge the 30 day statutory period. The *P.S.C. of N.Y.* v. *F.P.C.* case, 327 F. 2d 893 (CADC), upheld the Commission's power under Section 16 of the Gas Act to issue temporary certificates to producers in situations where the producers did not fall within the specifically enumerated emergency situations set forth in Section 7(c) of the Gas Act. Section 16 of the Act, however, does not empower the Commission to override express statutory requirements; such jurisdictional defects cannot be waived. *Panhandle Eastern Pipe Line Co.* v. *F.P.C., supra.* The *Texas-Ohio Gas Co.* v. *F.P.C.* case, 207 F. 2d 615 (CADC), involved the question of when the 60 day period for filing a petition for court review commenced in a situation where the Commission took no action on an application for rehearing. It has nothing to do with the 30 day statutory period for filing an application for rehearing.

*The Commission orders:*

For the reasons set forth above, the application filed by Tenneco Oil Company for rehearing of the Commission's order of October 14, 1966 in this proceeding is dismissed.

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[1] According to Tenneco it requested the legal documents on or about August 23, 1966 (the day before the filing deadline) but did not receive them until late on August 24, 1966. Such documents, Tenneco states, were removed from the files in the subject proceedings and consolidated into a file to be printed for the court record in connection with petitions for review which had been filed with respect to Opinion No. 478, 34 FPC 1001.

[2] *City of Detroit* v. *Panhandle, et al.*, 6 FPC 951; *Northern Natural Gas Co.*, 7 FPC 638.

[3] *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 343 F. 2d 905 (CA8).

[4] *Michigan Consolidated Gas Co.* v. *F.P.C.*, 167 F. 2d 264 (CADC); *Pan American Petroleum Corp.* v. *F.P.C.*, 268 F. 2d 827.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COMMONWEALTH EDISON COMPANY AND CENTRAL ILLINOIS ELECTRIC AND GAS COMPANY, DOCKET NO. E-7275

### ORDER DENYING APPLICATION FOR REHEARING AND MOTION FOR STAY

(Issued January 30, 1967)

By our Opinion No. 507 issued December 2, 1966, 36 FPC 927, in the above-captioned proceeding, we found that the acquisition and merger of Central Illinois Electric and Gas Company by and into the Commonwealth Edison Company, as applied for in a joint application of the companies filed March 2, 1966, was consistent with the public interest as expressed in Section 203 of the Federal Power Act. Accordingly, we approved the proposed consolidation of the companies' facilities subject to certain conditions stated in the order accompanying the Opinion.

On January 3, 1967, the Utility Users League, *et al.*,[1] interveners in the proceeding, filed an application for rehearing of our Opinion and order. Interveners disagree with many of our findings and argue that our conclusion regarding the merger's consistency with the public interest is erroneous. They request that we grant rehearing and, upon so doing, rescind our existing order and enter a new order either remanding the case for further hearing or reversing entirely our December 2, 1966 decision. In the alternative, they ask that we stay its effectiveness until February 28, 1967.

We have considered the assignments of error and grounds for rehearing set forth in the present application and have reconsidered our Opinion No. 507. The arguments advanced here by the interveners are similar to those advanced by them at various stages in the proceeding and disposed of by us in the Opinion. Our conclusions as to these matters remain unchanged. No new facts or arguments have been brought to our attention which would be cause for granting rehearing or disturbing the original Opinion and order.

Contrary to the interveners' assertion, the right both to petition for rehearing and to seek judicial review in no way was frustrated by our failure to stay consummation of the merger until the expiration of the review period. The applicants were aware of the fact that any implementation of the merger prior to the conclusion of possible judicial review proceedings would be at their peril. See *e.g., California* v. *Federal Power Commission*, 369 U.S. 482. The decision to proceed or not during that period is for them to make in the exercise of their business judgment. Indeed, any delaying action on our part, in the absence of a showing of extenuating circumstances could unnecessarily have prejudiced consummation of the merger. In the circumstances, the interveners have not shown any irreparable injury and the motion for a stay will be denied.

*The Commission further finds:*

(1) The assignments of error and grounds for rehearing set forth in the application for rehearing filed by Utility Users League, *et al.*, present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 507.

(2) The motion for stay should be denied.

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[1] Utility Users League, Nickolas L. Barnes, Sidney J. Rosenberg and Harry R. Booth.

*The Commission orders:*

(A) The application for rehearing of Opinion No. 507 filed by Utility Users League, *et al.* on January 3, 1967, is denied.

(B) The motion for stay of Opinion No. 507 is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## WILLIAM E. MCCOMMONS, D/B/A, MCCOMMONS EXPLORATION COMPANY, ET AL., DOCKET NO. RI63-281

### ORDER DENYING MOTION TO TERMINATE

(Issued January 30, 1967)*

William E. McCommons, d/b/a McCommons Exploration Company, *et al.* (McCommons) on December 5, 1966, filed a motion requesting that the above-entitled proceeding be terminated and that he be relieved of any refund obligation therein. Docket No. RI63-281 related to a proposed increase from 11.9789¢ per Mcf, designated as Supplement No. 3 to McCommons' FPC Gas Rate Schedule No. 1, for a now discontinued sale[1] to United Gas Pipe Line Company from the Baxterville Field, Lamar County, Mississippi, which became effective subject to refund as of January 7, 1963. The last sale of gas from the only producing well was made on April 8, 1966. McCommons' potential refund obligation in this proceeding amounts to approximately $54,000, exclusive of interest. In support of its request for relief McCommons' claims that the rate increase involved here did not cover the costs relating to his sale.

The question of the special circumstances in which a producer should be relieved of refund obligations should not be decided prior to the completion of an area rate proceeding. We shall therefore deny McCommons' motion without prejudice to its resubmittal after the just and reasonable rate for this sale has been determined in an appropriate area rate proceeding. Such action is analogous to the action taken in *Dorchester* where we declined to decide the *Sierra* question raised by Dorchester prior to the conclusion of Docket No. AR64-1.[2] Since it has not been determined whether McCommons should make any refunds in Docket No. RI63-281 (in the absence of special circumstances), it is clear that McCommons will suffer no monetary loss by reason of our action herein.

*The Commission orders:*

For the reasons set forth above, McCommons' motion for termination of Docket No. RI63-281 is denied.

Commissioner O'Connor *not participating.*

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*Reconsideration denied by order issued June 12, 1967, 37 FPC 1048.

[1] An abandonment application under Section 7(b) of the Act with respect to the subject sale has been filed by McCommons, but no action has yet been taken by the Commission with respect thereto.

[2] *Dorchester Gas Producing Co.*, Docket No. RI64-749, *et al.*, 32 FPC 1339, 33 FPC 88.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP67-135

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND RELOCATION OF FACILITIES

(Issued January 31, 1967)

On November 10, 1966, East Tennessee Natural Gas Company (Applicant) filed in Docket No. CP67-135 an application, as supplemented on November 28, 1966, pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon and relocate certain natural gas facilities, all as more fully set forth in the application.

Specifically, Applicant proposes to abandon by sale to United Cities Gas Company (United Cities) the final 5,302 feet of its 4½-inch lateral pipeline serving the Shelbyville, Tennessee area and to relocate the present delivery point utilized for the delivery of gas to United Cities approximately one mile upstream from its present location. The sale price will be the depreciated book value plus cost of right-of-way at the time of sale. The facilities sold by Applicant to United Cities will be utilized by United Cities as a part of its distribution operations.

United Cities, an existing resale customer of Applicant in the Shelbyville, Tennessee area, plans to construct a new propane-air peak shaving plant to assist in its Shelbyville operations. United Cities advised Applicant that there was not sufficient room at the site of its existing city gate station adjacent to Applicant's sales metering facilities to construct is new propane-air peak shaving plant. United Cities, therefore, requested Applicant to relocate its delivery facilities to the site on which they proposed to construct the new propane-air peak shaving plant.

United Cities has also agreed to reimburse Applicant in the amount of $8,500 for relocating its gas sales metering facilities. The total estimated cost involved in the relocation is estimated to be $16,979.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on January 19, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knoxville, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of February 2, 1948 in Docket No. G-889 (7 FPC 5).

(2) The facilities proposed to be abandoned and relocated by Applicant, as hereinbefore described, and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

**(3) The abandonment and relocation of the subject facilities, as hereinbefore described, are permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.**

***The Commission orders:***

**(A) Permission for and approval of the abandonment and relocation by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted.**

**(B) Applicant shall advise the Commission of the date of said abandonment and relocation within 10 days thereof.**

Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## GULF STATES UTILITIES COMPANY, DOCKET NO. E-7328

### SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued February 1, 1967)

By order issued January 16, 1967, 37 FPC 94, in the above-entitled matter, the Commission authorized Gulf States Utilities Company (Applicant) to issue and sell at competitive bidding $35,000,000 principal amount of First Mortgage Bonds, due 1997, subject among others, to the provisions set forth in paragraph (B) of that order as follows:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant on February 1, 1967, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Lehman Brothers, Salomon Brothers & Hutzler, and Eastman Dillon, Union Securities & Co., to purchase the proposed issuance of $35,000,000, principal amount of Bonds, for the price of 101.40% of principal amount, with an interest rate of 5⅜%.

*The Commission finds:*

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued January 16, 1967, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

*The Commission orders:*

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D) and (E) of the Commission's order issued January 16, 1967, in the above docket.

Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## TOWN OF MONTEZUMA, IOWA AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP67-136

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 1, 1967)

On November 10, 1966, the Town of Montezuma, Iowa (Applicant), filed in Docket No. CP67-136 an application, as amended on December 22, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 843 Mcf of natural gas per day for resale and distribution in the Town of Montezuma, Poweshiek County, Iowa, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 18.4 miles of 4.5-inch O.D. lateral pipeline extending northward from a point of interconnection with Respondent's transmission pipeline and 1 mile of 2⅜-inch O.D. lateral pipeline extending westward from the northern terminus of the 4-inch lateral to Applicant's proposed town border station and distribution system.

Under the general terms of its tariff Respondent will install a meter station at its point of delivery.

The total estimated annual and peak day natural gas requirements of Applicant in the third year of proposed operations are 148,080 Mcf and 843 Mcf, respectively.

The total estimated cost of Applicant's proposed project is $489,940, which cost will be financed through the issuance of first mortgage revenue bonds.

On November 25, 1966, Respondent filed an answer to the application, stating that it has no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

(1) Respondent, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942 in Docket No. G-235 (3 FPC 830).

(2) Applicant, Town of Montezuma, Iowa, is a municipal corporation incorporated under the laws of the State of Iowa and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said community.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 843 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as requested, will not

place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 843 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

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Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. G-19461

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 1, 1967)

On January 23, 1963, Panhandle Eastern Pipe Line Company (Petitioner), filed in Docket No. G-19461 an application for temporary authorization and a petition to amend the order issued May 25, 1961, 25 FPC 1036, in said docket by requesting authorization to increase the horsepower of a compressor installation at its Waverly Storage Field, in Morgan County, Illinois, all as more fully set forth in the petition to amend.

By the order issued in the instant docket on May 25, 1961, Petitioner was authorized to install 1330 of compressor horsepower. Prior to January 23, 1963, Petitioner had installed 880 compressor horsepower. Petitioner alleged that it would be more feasible to complete the installation of the balance of the authorized horsepower by the installation of 550 horsepower engine than by the installation of a 450 horsepower engine.

Petitioner requests that the order issued in the instant proceeding be amended so as to authorize an increase of 100 horsepower compressor capacity by the installation of a 550 horsepower compressor engine for a total of 1430 compressor horsepower.

The Commission on March 15, 1963, granted temporary authorization for the requested increase in compressor horsepower at the Waverly Storage Field. By letter dated August 16, 1963, Panhandle notified the Commission that the subject construction was completed and the facilities were in service.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on December 16, 1966 (31 F.R. 16171). No protest, petition to intervene, or notice of intervention has been filed in this proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued May 25, 1961, in Docket No. G–19461 be amended as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued May 25, 1961, in Docket No. G–19461 is further amended so as to authorize Petitioner to increase the compressor horsepower at the Waverly Storage Field from 1330 to 1430 horsepower.

(B) The amendment authorized by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in paragraphs (f) and (g) of Section 157.20 of such Regulations.

(C) In all other respects said order shall remain in full force and effect.

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Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP67–95

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 1, 1967)

On October 13, 1966, South Georgia Natural Gas Company (Applicant) filed in Docket No. CP67–95 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to increase its system capacity by approximately 13,700 Mcf of gas per day in order to meet increased interruptible requirements of existing industrial customers and to initiate interruptible service to the Bridgeboro Lime and Stone Company and the Jackson Tubing and Conduit Corporation, Mitchell and Early Counties, Georgia, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate the following facilities:

(a) 2 sales laterals consisting of 3.3 miles of 3-inch pipeline in Mitchell and Early Counties, Georgia;

(b) 4.9 miles of 6-inch pipeline, looping a portion of its existing 4-inch transmission line No. 19, Gadsden County, Florida;

(c) two 1,200 horsepower compressors at an existing compressor station near Holy Trinity, Alabama;

(d) miscellaneous metering, regulating and related facilities.

Applicant also proposes to relocate a 1,100 horsepower compressor from the Holy Trinity station 74 miles downstream to a point near Albany, Georgia.

Applicant's estimates of the off-peak and annual natural gas requirements of its existing and proposed customers are as follows:

| Customer | Off-peak day | 1968 annual |
|---|---|---|
| Resale | 53,749 | 9,877,031 |
| Direct (existing) | 35,247 | 12,371,000 |
| Bridgeboro Lime | 840 | 94,000 |
| Jackson Tubing | 600 | 63,000 |
|  | 90,436 | 22,405,031 |

The total estimated cost of Applicant's proposed project is $1,035,425, which will be financed from cash on hand. This cost includes costs of $813,175 for new compressor facilities, $105,200 for transmission facilities, and $49,750 for related miscellaneous facilities.

After due notice, no petition to intervene, notice of intervention or protest to the application has been filed.

At a hearing held on January 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, South Georgia Natural Gas Company, a Georgia corporation with its principal place of business in Thomasville, Georgia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 3, 1954, in Docket No. G–1915 (13 FPC 666).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, South Georgia Natural Gas Company, authorizing the construction and operation of facilities and the transportation of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

(C) The certificate issued is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(D) The facilities authorized shall be constructed and placed in actual operation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's

Regulations under the Natural Gas Act, within one year from the date on which this order issues.

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Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP67-160

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 1, 1967)

On December 8, 1966, Transcontinental Gas Pipe Line Corporation (Applicant), filed in Docket No. CP67-160 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale for resale of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant seeks authorization for the sale and delivery of an additional volume of 3,500 Mcf of natural gas per day to the City of Lexington, North Carolina (Lexington), an existing customer, under Applicant's Rate Schedule CD-2, and for the construction, installation and operation of a sales meter station and appurtenant equipment to be located at approximately mile post 1323 on Applicant's 30-inch main transmission line "A" near Lexington, in Davidson County, North Carolina.

Lexington by letter dated November 4, 1966, requested an additional 3,500 Mcf per day as of November 1, 1967. Lexington's additional market consists of a new plant, being constructed by the Pittsburgh Plate Glass Company, and additional prospective residential customers. Pittsburgh Plate's new plant will manufacture glass fibers for which highly controlled heat is needed. The plant's requirements are estimated at 3,500 Mcf per day of firm gas by November 1, 1967. Applicant states that Lexington desires service at the new point of delivery starting April 1, 1967.

The total estimated cost of the proposed facilities is $22,000.

After due notice, no petition to intervene, notice of intervention[1] or protest to the granting of the application has been filed.

At a hearing held on January 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 29, 1948, in Docket No. G-704 (7 FPC 24).

(2) The proposed construction, installation and operation of facilities and the sale and delivery of natural gas by Applicant to the City of Lexington as herein-

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[1] Notice of intervention filed by North Carolina Utilities Commission on January 12, 1967, does not oppose disposition of the application under the Commission's abbreviated procedure.

before described, and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction, installation and operation of facilities and the sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the construction, installation and operation of facilities and the sale and delivery of natural gas to the City of Lexington, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (1), (c) (3), (c) (4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) Applicant and the City of Lexington shall execute a new service agreement under Applicant's FPC Rate Schedule CD-2 in accordance with the Commission's Regulations reflecting the new delivery point and increased volumes and the same shall be filed with the Commission by Applicant.

(D) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations by April 1, 1967.

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Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## SAMEDAN OIL CORPORATION (OPERATOR), ET AL.

### ORDER ACCEPTING RATE INCREASE BUT DENYING REQUEST FOR RETROACTIVE EFFECTIVE DATE

(Issued February 2, 1967)

Samedan Oil Corporation (Operator), *et al.* (Samedan), a respondent in the Permian Basin area rate proceeding, filed on January 3, 1967, a proposed rate increase from a conditioned initial rate of 16.0¢ to 16.5¢ per Mcf at 14.65 psia, designated as Supplement No. 3 to Samedan's FPC Gas Rate Schedule No. 10, for a sale of pipeline quality new gas-well gas to El Paso Natural Gas Company in the Permian Basin Area of Texas. The proposed rate is equal to the applicable area ceiling rate determined in Opinion No. 468, 34 FPC 159. The quality statement relating to this sale was accepted by Commission order issued June 13, 1966 in Docket No. AR61-1, *et al.*, 35 FPC 960.

Samedan is currently selling the subject gas under a temporary issued March 6, 1962 in Docket No. CI62-691 at a conditioned rate of 16¢, in lieu of the contract initial rate of 17¢ per Mcf. The temporary also contains a condition prohibiting the filing of a rate increase above the conditioned initial rate. Deliveries commenced under the temporary as of April 2, 1962. Samedan's application for a permanent certificate is consolidated in the Order To Show Cause, 34 FPC 424, issued concurrently with Opinion No. 468.

Since the proposed rate does not exceed the applicable area rate ceiling determined in Opinion No. 468, it is appropriate to waive the condition in the temporary prohibiting any rate increase filing to permit this filing and to allow such rate to become effective as of February 3, 1967, the date of expiration of statutory notice.

Samedan requests that its increased rate be made effective retroactively as of the date of initial delivery (April 2, 1962) or, in the alternative, the effective date of Opinion No. 468 (September 1, 1965).

Good cause does not exist for granting such request. Section 5(a) of the Natural Gas Act provides that "the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company." Consequently, it was incumbent upon Samedan to file for the 16.5¢ rate determined in Opinion No. 468 to be just and reasonable for the subject sale if it wished to make such rate effective as of the effective date of that opinion.[1] Samedan did not make any rate filing prior to its subject filing and there is no justification for treating it as though it did. Since a Section 5(a) determination can have no retroactive effect, it is also clear that there is no justification for the earlier effective date (the date of initial delivery) requested by Samedan.

Our action here is consistent with the filed rate doctrine. Under that doctrine the effective rate on file with the Commission is the only rate that may be charged or collected for the sale of gas in interstate commerce. Such doctrine has received judicial approval. *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246; *Hope Natural Gas Co.* v. *F.P.C.*, 134 F. 2d 287, reversed on other grounds, 320 U.S. 591; *Mississippi River Fuel Corp.* v. *F.P.C.*, 202 F. 2d 899 at 903-904.

*The Commission orders:*

For the reasons set forth above, the rate filing condition in the temporary issued in Docket No. CI62-691 is waived to permit Samedan's filing herein, and the 16.5¢ rate contained in Supplement No. 3 to Samedan's FPC Gas Rate Schedule No. 10 is accepted effective as of February 3, 1967.

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[1] Samedan could have filed for an increase rate of 16.5¢ (or even 17¢) prior to the Permian decision despite the rate condition in the temporary because as of April 2, 1965, three years had elapsed from the date deliveries first commenced. The Commission consistently has granted a waiver in these circumstances. (*Shell Oil Company*, Docket No. RI65-596, order issued April 20, 1965). If such a filing had been made at that time, it would, of course, have been subject to suspension. However, if Samedan had filed immediately after the issuance of the *Permian* decision, waiver would have been granted and the increase accepted.

Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP63-290 AND NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-291

### ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 2, 1967)

On December 12, 1966, Transwestern Pipeline Company (Transwestern), and on December 9, 1966, Northern Natural Gas Company (Northern), filed in Docket Nos. CP63-290 and CP63-291 respectively, petitions to amend the order issued in said dockets on October 10, 1963, 30 FPC 997, as amended on September 28, 1964, 32 FPC 863, August 6, 1965, and February 21, 1966, 35 FPC 242 by requesting authorization to extend the period in which Petitioners may exchange natural gas, all as more fully set forth in the petitions to amend.

By the order issued on October 10, 1963, as amended on September 28, 1964, and August 6, 1965, in the instant proceedings, Petitioners were authorized to install facilities and exchange volumes of gas for a period ending September 30, 1965. By the amending order issued February 21, 1966, Transwestern was authorized to continue deliveries of gas to Northern until December 31, 1966, and Northern was authorized to continue redeliveries to Transwestern until December 31, 1969, or such shorter period as may be required to redeliver to Transwestern the equal volumes delivered by Transwestern to Northern.

Petitioners now seek to further amend the order issued in the instant proceedings by requesting authorization for Transwestern to continue to deliver gas to Northern until June 30, 1967, and for Northern to continue to redeliver gas to Transwestern until June 30, 1970.

The Commission issued temporary authorizations for the requested authorizations of Transwestern and Northern on December 30, 1966.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 30, 1966 (31 F.R. 16737). No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued October 10, 1963, in Docket Nos. CP63-290 and CP63-291 be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued October 10, 1963, in Docket Nos. CP63-290 and CP63-291 are further amended so as to authorize Transwestern in Docket No. CP63-290 to continue to deliver natural gas to Northern until June 30, 1967, and Northern to continue to redeliver natural gas to Transwestern in Docket No. CP63-291 until June 30, 1970.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP64-29, ET AL.

### ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 3, 1967)

On October 28, 1966, Algonquin Gas Transmission Company (Petitioner) filed in Docket No. CP64-29, *et al.*, a petition to amend the order issued in said docket on December 19, 1963, 30 FPC 1559, requesting authorization to continue deliveries of natural gas to Public Service Electric and Gas Company (Public Service) for the account of Texas Eastern Transmission Corporation (Texas Eastern) for a period terminating no later than November 1, 1967, all as more fully set forth in the petition to amend.

By the order issued in the instant docket on December 19, 1963, Petitioner was authorized, *inter alia*, to transport and deliver 15,400 Mcf of gas per day to Public Service at Wanaque, New Jersey, for the account of Texas Eastern for a period of one year commencing November 1, 1964, and for the transportation and delivery of 20,000 Mcf per day for an additional year commencing November 1, 1965. This service was designed to enable Public Service to receive necessary volumes of natural gas from Texas Eastern until Texas Eastern could install its own facilities for direct deliveries to Public Service as proposed in the application filed in Docket No. CP64-5.

Texas Eastern's proposed facilities were scheduled for completion by the 1966-67 winter heating season. However, because of unforeseen construction delays, Texas Eastern has been unable to complete the facilities within the scheduled time and has requested Petitioner to extend the subject service to allow for this delay.

In accordance with ordering paragraph (E) of the Commission's order issued in the instant proceeding Texas Eastern has until December 19, 1967, to complete its proposed construction.

Petitioner has agreed to continue the subject service on a month-to-month basis under the same rates, terms and conditions as contained in Petitioner's X-11 Rate Schedule, reserving the right to terminate its transportation service on November 1, 1967. Petitioner will apply for appropriate abandonment authorization when Texas Eastern's facilities are placed in operation.

Petitioner has filed copies of Original Sheet Nos. 123-A and 123-B to its Rate Schedule X-11 changing the termination date to November 1, 1967.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in the instant docket on December 19, 1963, be amended as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on December 19, 1963, in Docket No. CP64-29, *et al.*, is amended so as to authorize the continued transportation and delivery of 20,000 Mcf of natural gas per day by Petitioner to Public Service Electric and Gas Company for the account of Texas Eastern Transmission Corporation for a period terminating no later than November 1, 1967, as hereinbefore set forth and as more fully set forth in the petition to amend.

(B) Petitioner's amended Rate Schedule X-11 is accepted for filing effective as of the date of this order.

(C) In all other respects the subject order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CENTRAL HUDSON GAS & ELECTRIC CORPORATION, DOCKET NO. E-7323

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued February 3, 1967)

Central Hudson Gas & Electric Corporation (Central Hudson) filed an application with the Federal Power Commission on November 9, 1966, seeking an order pursuant to Section 203 of the Federal Power Act authorizing it to acquire all of the properties and assets and assume all the liabilities of Ellenville Electric Company (Ellenville).

Central Hudson is incorporated in the State of New York and is qualified to do business in that State with its principal business office at Poughkeepsie, New York and is engaged primarily in the generation, purchase, sale at wholesale, transmission and distribution of electric energy in all or parts of the counties of Albany, Columbia, Dutchess, Greene, Orange, Putnam, Sullivan and Ulster in the State of New York. Applicant also operates a gas utility operation in this same service area.

Ellenville owns and operates a distribution system serving about 4,100 retail customers in the village of Ellenville and in part of the Town of Wawarsing in Ulster County, New York. Ellenville owns no generating facilities and purchases its entire energy requirements from Central Hudson. In 1965, Ellenville bought 65,076,956 kwh from Central Hudson.

Under an Agreement and Plan of Reorganization between Central Hudson and Ellenville, dated October 20, 1966, Central Hudson agreed to issue 52,800 shares of its Common Stock, no par, in exchange for Ellenville's entire Common Stock consisting of 4,800 shares, no par, and to forthwith merge Ellenville into Central Hudson. According to the application the ratio of exchange of eleven shares of Central Hudson's Common Stock for each share of Ellenville's Common Stock "was determined by arms-length negotiations".

Central Hudson's issuance of 52,800 shares of Common Stock, no par, is to be recorded at $168,000, which amount is the same as the recorded amount of Ellenvilles' 4,800 shares of Common Stock, no par. Ellenville's Preferred Stock of $37,500 is to be called prior to the exchange of Common Stock, the funds for the call are to be obtained from the issuance of a note for $37,500 and this note will be assumed by Central Hudson. Ellenville's Earned Surplus of $762,132, less a charge against it of $1,787 for elimination of Ellenville's Capital Stock Expense, net amount of $760,345, will be transferred to Central Hudson's Earned Surplus.

In the merger, Central Hudson will acquire and record net assets of $928,345. This amount will be balanced on the books of Central Hudson by Common Stock of $168,000 and Earned Surplus of $760,345. The merger will not result in the creation of an acquisition adjustment.

After the merger, the customers of Ellenville will continue to be served by the existing facilities and all customers of Ellenville will become customers of Central Hudson. Some of Ellenville's existing rates in the territories are somewhat lower than those of Central Hudson and some are higher. For example, the monthly bill for a customer of Central Hudson taking 500 kwh would be $12.57. The comparable bill for a customer of Ellenville is $11.50 or $13.00 depending upon whether he has a water heater.

Central Hudson has been reducing rates steadily. For example, as of January 1, 1964, its monthly bill for 250 kwh of residential service was $8.93; as of January 1, 1965 it was $8.58; as of February 26, 1965, it was $8.20. The comparable bill for Ellenville is $7.75 or $8.00 depending upon whether the customer has a water heater. Central Hudson has indicated that anticipated savings will inure to the advantage of all customers of the combined companies. In any event, the rates presently being charged by Ellenville which have been in effect since 1956, will be continued for at least one year by Central Hudson subject to the rules and regulations of the New York Public Service Commission, insofar as customers in the present Ellenville service area are concerned.

According to the application Ellenville has found it necessary, because of its limited staff, to depend upon Central Hudson's assistance from time to time in providing financial advice, engineering planning and design assistance. Central Hudson represents that the proposed merger is in the public interest because, among other reasons, it will be able to supply enlarged administrative facilities for the benefit of the Ellenville business and of its customers and it will make available the services of its engineers and of its financial, insurance, rate, promotional, area development, tax, purchasing, safety, personnel, and other experts to the development of Ellenville's property and business.

Written notice of the application has been given to the Public Service Commission of the State of New York and to the Governor of that State. Notice was also published in the Federal Register on November 24, 1966 (31 F.R. 14901), stating that any person desiring to be heard or to make any protest with reference to the application should on or before December 20, 1966, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received. The Public Service Commission of the State of New York approved the transaction by an order issued January 10, 1967.

*The Commission finds:*

(1) Central Hudson, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued September 13, 1961, *Central Hudson Gas & Electric Corporation, et al.*, Docket No. E-7006 (26 FPC 482).

(2) By the proposed transaction, Central Hudson will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Ellenville, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Central Hudson, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

*The Commission orders:*

(A) The proposed acquisition by Central Hudson of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Central Hudson shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITIES SERVICE GAS COMPANY, DOCKET NO. CP67–99

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 6, 1967)

On October 17, 1966, Cities Service Gas Company (Applicant), filed in Docket No. CP67–99 a "budget-type" application and supplement thereto on December 27, 1966, pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and the operation of certain natural gas transportation and sales facilities, all as more fully set forth in the application.

Applicant proposes to augment its ability to act with reasonable dispatch during the calendar year 1967 in establishing new delivery points for the sale of presently authorized volumes of natural gas to existing distributors in existing market areas at filed rates for resale by them pursuant to proper local and state authorizations, for direct sales of natural gas to consumers, and to make necessary miscellaneous rearrangements on its system.

Applicant states that the maximum delivery to any one customer will not exceed 100,000 Mcf of natural gas annually, and that the gas will not be used for boiler fuel purposes, as defined by Section 157.7(c)(9) of the Regulations under the Act.

The total estimated cost of the proposed facilities will not exceed $300,000, which cost will be paid out of treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 2, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application, and supplement thereto, in this proceeding are proposed to be used in the transportation and/or sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1967. The total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, to construct during the calendar year 1967 the proposed facilities hereinbefore described, as more fully described in the application, and supplement thereto, in this proceeding, and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967. The total expenditures for facilities to be constructed thereunder is limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## LONE STAR GAS COMPANY, DOCKET NO. CP67-152

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 6, 1967)

On November 29, 1966, Lone Star Gas Company (Applicant) filed in Docket No. CP67-152 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities in connection with the underground storage of natural gas in the Lake Dallas Field, Denton County, Texas, all as more fully set forth in the application.

Applicant, pursuant to its existing contract with Mobil Oil Corporation has an option, and is exercising its option, to purchase Mobil's rights and facilities in the Lake Dallas Field and to use such field for storage purposes.

Applicant proposes to utilize in place 500 feet of existing 8-inch Line FA extending westerly from Line F to approximate Station 5+00 and to construct and operate the following facilities:

(1) Approximately 1,500 feet of 8-inch Line FA Extension extending from Line FA in a southerly direction to the outlet of a proposed dehydration plant located on the storage compressor site;

(2) An injection compressor station (1,100 HP);

(3) Gas injection and withdrawal systems; and

(4) A withdrawal dehydration plant (50,000 Mcf maximum).

Applicant also proposes to drill and equip at least two injection and withdrawal wells.

Applicant proposes to inject an average of 12,000 Mcf of gas per day for 200 days per year into the reservoir through three existing and the two proposed wells. The estimated delivery capacity through these five wells is 37,000 Mcf of gas per day with a peak withdrawal of 50,000 Mcf of gas per day.

The total estimated investment in existing facilities to be utilized, the approximate cost of construction, acquisition and drilling, together with possible future drilling and construction is $988,817, which cost will be financed from working capital.

Applicant states that the Railroad Commission of Texas must permit utilization of the Lake Dallas Field for storage purposes. Applicant will file for such authorization.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 2, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G-442 (4 FPC 565).

(2) The proposed construction and operation of facilities by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding authorizing the construction and operation of facilities as more fully described in the application, and exhibits in this proceeding, subject to the jurisdiction of the Commission, and upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities and operation are conditioned upon Applicant obtaining, and filing with this Commission, a permit from the Railroad Commission of Texas authorizing utilization of the Lake Dallas Field for storage purposes.

(D) The certificate issued by paragraph (A) above is conditioned upon Applicant's compliance with the following conditions:

(1) The total gas stored in the Strawn Sand of Lake Dallas Field shall not exceed 4,640,000 Mcf at 14.73 psia nor the field pressure exceed 1,271 psig without further Commission authorization.

(2) Applicant shall submit semi-annual reports showing the daily volumes of natural gas injected and withdrawn each month of the cycle (in Mcf at 14.73 psia and 60° F) and the reservoir pressures during each period.

(3) These reports shall coincide with the termination of the injection and withdrawal cycles and shall terminate two years after the storage in-

ventory volume has reached or closely approximates the maximum volume permitted in the Commission's order.

(E) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MINNESOTA POWER & LIGHT COMPANY, DOCKET NO. E-7329

### ORDER AUTHORIZING THE ISSUANCE OF PROMISSORY NOTES

(Issued February 6, 1967)

Minnesota Power & Light Company (Applicant), incorporated under the laws of the State of Minnesota with its principal business office at Duluth, Minnesota, filed an application on December 22, 1966, with the Federal Power Commission, seeking an order pursuant to Section 204 of the Federal Power Act authorizing it to issue from time to time Promissory Notes in amounts not exceeding the aggregate of $11,000,000 outstanding at any one time to evidence short-term borrowings from commercial banks.

Applicant is principally engaged in the generation, purchase, transmission, distribution and sale of electricity in central and northeastern Minnesota. Applicant interchanges energy with its subsidiary, Superior Water, Light and Power Company located in Superior, Wisconsin, at the Minnesota-Wisconsin border.

According to the application, Applicant proposes to issue short-term Notes from time to time, under a line of credit with five banks in Duluth, Minnesota on various dates prior to December 31, 1968, in various amounts up to a total amount of $11,000,000 outstanding at any one time. This line of credit contains the following provisions: (a) the Notes issued thereunder will bear interest at a rate not to exceed ½ percent above the prime commercial rate in effect at the time of issuance, subject to increase or decrease if the prime rate changes during the period the Notes are outstanding; (b) a commitment fee of ½ of 1 percent per annum will be paid on available unused credit; (c) the Applicant will not be required to maintain compensating balances; (d) the Notes will mature not later than one year from dates of issuance; and (e) the Notes may be prepaid at any time on ten days' notice without penalty.

The application states that the proceeds from the bank borrowings to be evidenced by the Promissory Notes described above will be used to refund $3,960,000 outstanding notes issued under Section 204(e) of the Act, and to provide a portion of the funds for the Applicant's construction program. This program has required an estimated $9,400,000 in 1966 and is expected to require approximately $9,500,000 and $10,000,000 in 1967 and 1968, respectively. About 10 percent of the 1966–68 construction program will be for generating facilities, which includes the modification of Applicant's Aurora Station to raise its capacity by 20 mw. Over half of the construction program expenditures will be for transmission facilities and substations which includes construction of some 427 miles of transmission line.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission and to the Governor of that State. Notice has also been given by publication in the Federal Register on January 12, 1967 (32 F.R.

343), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before January 24, 1967 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 21, 1965, *Minnesota Power & Light Company*, Docket No. E-7219 (33 FPC 1039).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $11,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $11,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is sufficient.

*The Commission orders:*

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $11,000,000, outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto being not later than December 31, 1968.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-139

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

**(Issued February 6, 1967)**

**On November 14, 1966, Northern Natural Gas Company (Applicant), filed in Docket No. CP67-139 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(c) of the Commission's Regulations under the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and operation of gas sales facilities for the sale of natural gas and miscellaneous rearrangement of facilities, all as more fully set forth in the application.**

**Applicant seeks authorization for the construction during the calendar year 1967 and operation of gas sales facilities for the sale of natural gas to distributors for resale in existing market areas, for direct sales to consumers through Applicant's Peoples Division and for miscellaneous routine branch line and town border station relocations or rearrangements not resulting in any change in service to existing customers.**

**Applicant states it will utilize such gas sales facilities to sell natural gas to its existing distributors, including Peoples Division, for resale in existing market areas including the producing States of Texas, New Mexico, Oklahoma and Kansas. Such sales and deliveries will not exceed 100,000 Mcf annually to any given distributor through any given facility installed and that the gas will not be used or resold for boiler fuel purposes. Sales for resale will be made at rates on file with the Federal Power Commission, and in the producing states mentioned above which are not covered by Northern's FPC Gas Tariff, Second Revised Volume No. 1, sales for resale will be pursuant to contracts between Northern and the buyer requesting such service. Firm volumes delivered through the facilities herein requested will be provided from the existing contract demand authorized by the Commission for the distributor involved, including Peoples Division, or from capacity of the existing pipeline facilities in the producing areas where contract demand rate schedules are not applicable. Northern will also make direct sales to consumers through its Peoples Division in accordance with the provisions of Section 157.7(c) of the Regulations.**

**Applicant requests waiver of Section 157.7(c)(1)(i) of the Regulations which prohibits the filing of an abbreviated application when a distributor is required to make a contribution to the Applicant for cost of construction of facilities, as it has been its policy to require distributors customers to make a contribution toward the cost of new delivery points which do not result in additional contract demand purchases.**

**The total estimated cost of the proposed facilities will not exceed $300,000 and will be financed from cash on hand.**

**After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.**

**At a hearing held on February 2, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,**

***The Commission finds:***

**(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).**

**(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.**

**(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.**

**(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.**

**(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.**

**(6) The authorization hereinafter granted should be limited to construction during the calendar year 1967. The total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000 with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.**

**(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.**

**(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.**

**(9) Good cause has been shown for waiver of the provisions of Section 157.7 (c)(1)(i) of the Commission's Regulations as they relate to contributions by distributor customers.**

***The Commission orders:***

**(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to construct, during the calendar year 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct sale customers and to distributors for resale as hereinafter provided.**

**(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly Sections 157.7(c)(1), (c)(2), (c)(3) and the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.**

**(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967. The total expenditures for facilities to be constructed thereunder is limited to a maximum of $300,000, with the total**

deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(F) The provisions of Section 157.7(c)(1)(i) of the Commission's Regulations are waived insofar as they relate to the contributions in aid of construction by distributor customers.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## RODMAN AND LATE, ET AL., DOCKET NO. CS66-48, ET AL.

### ORDER GRANTING RELIEF

(Issued February 6, 1967)

The small producers listed in the Appendix have requested withdrawal or cancellation of their small producer certificates and reinstatement of their original certificates and rate schedules relating to sales in the *Permian* area. Prior to issuance of the small producer certificates each of these producers had rates in effect which exceeded the applicable area base rate ceiling determined in Opinion Nos. 468 and 468-A, 34 FPC 159, 1068. These producers contend they may suffer irreparable economic loss in the event the applicable just and reasonable ceilings set forth in *Permian* are determined to be higher as a result of pending judicial review of that case because of the requirement in their small producer certificates that they reduce their rates to the applicable area base rate ceiling.

The Tenth Circuit in *Skelly Oil Co.* v. *F.P.C.* (CA10 No. 8385, *et al.*) stayed the effectiveness of Opinion Nos. 468 and 468-A with respect to all petitioning natural gas companies until 30 days after the decision of that Court on the merits of the petitions for review or 30 days after the determination of any petition for rehearing which may be timely filed.[1] The Commission by order issued February 11, 1966, in Docket No. AR61-1, *et al.*, 35 FPC 211, granted a similar stay to those producers which did not seek review of the *Permian* decision. The impact of such stay orders is that the producers covered thereby may continue to collect or may file for rates in excess of the applicable just and reasonable rate ceilings determined by us in *Permian* pending judicial review. The stay orders, however, do not apply to those who have obtained small producer certificates. Pursuant to such certificates the producers must reduce their rates to the applicable base ceiling effective as of the date of issuance thereof. It is thus clear that small producers are at a potential disadvantage in comparison with other producers.

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[1] The Court on January 20, 1967, issued a decision remanding the *Permian* case to the Commission for further proceedings consistent with its decision. The Commission has moved to stay the mandate and continue the stay pending consideration by the Solicitor General of its request that a petition for certiorari be filed with the Supreme Court.

The purpose of the small producer program is to relieve such producers of certain requirements applicable to other producers which are deemed to be unnecessary for effective regulation of small producers. Such program was not intended, however to place the small producer in a more onerous position than other producers. We have concluded that it would be appropriate to grant relief to the small producers involved here in accordance with the principles set forth below.[2] We will also grant similar relief to other small producers upon application therefor.

We will permit producers who have obtained small producer certificates to reinstate, effective as of the effective date of such certificates,[3] their above ceiling rates (either firm or subject to refund) which were in effect prior to the issuance of such certificates. These reinstated rates, however, will be subject to rejection, as of the date of reinstatement, in the event the *Permian* court stay is dissolved or the moratorium provisions in Opinion Nos. 468 and 468-A are upheld ultimately upon judicial review. The collection of such reinstated rates is also subject to the refund provisions of paragraph (D) of Opinion No. 468 as well as the refund provisions of any applicable suspension proceeding.

Small producers may obtain reinstatement of their above ceiling rates and rate schedules by filing a request for reinstatement. Where appropriate we will also reinstate suspension proceedings. Applicants receiving small producer certificates in the future will be permitted upon request to continue collection of or file for above ceiling rates. Any producer desiring to collect a rate (not previously filed for) in excess of its previously effective rate or the rate authorized under its small producer certificate, whichever is higher, will be required to file a notice of change in rate as well as a request for reinstatement of the related rate schedule. Such notices of change in rate will be subject to suspension under Section 4(e) of the Act.

In accordance with the foregoing, we shall reinstate the rates listed in the "Current Rate" column of the Appendix as of the effective date of the applicable small producer certificate as well as any suspension proceedings relating thereto. The 16¢ rates listed therein for sales under Rodman Oil Company's Rate Schedule No. 3, E. G. Rodman's Rate Schedule No. 2, and Rodman Petroleum Corporation (Operator), *et al.* Rate Schedule No. 2 are initial rates authorized under permanent certificates. The other listed rates are involved in suspension proceedings. All of these reinstated rates will be collected subject to refund as previously indicated.

In addition to reinstating the 16¢ initial rate under Rodman Petroleum Corporation (Operator), *et al.* Rate Schedule No. 2 as of the effective date of the small producer certificate issued in Docket No. CS66-52, we will also reinstate the 17¢ rate under that rate schedule which was suspended in Docket No. RI65-419 until June 7, 1965, but never made effective. Reinstatement of the 17¢ rate will be effective as of the date of issuance of this order if a surety bond is filed in accordance with the provisions of this order.

*The Commission orders:*

(A) The rate schedules and the related rates set forth in the "Current Rate" column of the Appendix are reinstated as of the respective dates of the applicable small producer certificates and if a satisfactory surety bond is filed as required by paragraph (B) hereof the 17¢ rate under Rodman Petroleum Corporation (Operator), *et al.* Rate Schedule No. 2 shall be reinstated and become effective subject to refund in Docket No. RI65–419 as of the date of issuance of this order.

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[2] There is no need to reinstate the terminated certificates or to vacate the small producer certificates, as requested by some of the producers.

[3] There is, of course, no justification for allowing reinstatement for the period prior thereto because small producers during such period were not precluded from filing above ceiling rates.

(B) Within 30 days of the issuance of this order, Rodman Petroleum Corporation in Docket No. RI65–419 shall file, in the attached form,* an executed surety bond in the amount of $1,200 (signed by a responsible officer of the corporation and evidenced by proper authority from the board of directors). Said bond shall be accompanied by a certificate to the effect that no other obligation has been assumed in connection with the bond in addition to the payment of the bond premium. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of filing, such bond shall be deemed to be satisfactory and to have been accepted for filing. The bond filed herein shall remain in full force and effect until discharged by the Commission. Rodman Petroleum Corporation shall comply with the refunding and reporting procedures required by the Natural Gas Act and Section 154.102 of the Regulations thereunder.

(C) The suspension proceedings in Docket Nos. G–19952, RI60–6, G–19994, G–19996, RI60–103 and RI65–419 and the previously accepted refund assurances relating thereto are reinstated with respect to the sales listed in the Appendix.

(D) The rates reinstated by paragraph (A) above are subject to rejection as of the effective date of reinstatement, in the event the *Permian* court stay is dissolved or the moratorium provisions in Opinion Nos. 468 and 468–A are upheld ultimately upon judicial review. The collection of such rates is also subject to the refund provisions of paragraph (D) of Opinion No. 468 as well as the refund provisions of any applicable suspension proceeding.

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*Omitted in printing.

APPENDIX

| Docket No. | Applicant | Terminated certificate Docket No. | Cancelled FPC gas rate schedule | Purchaser | Location | Current rate (cents per Mcf at 14.65 psia) | Contract rate as of Sept. 1, 1965 | Applicable area base rate |
|---|---|---|---|---|---|---|---|---|
| CS66-48 | Rodman and Late | G-14752 | 1 | El Paso Natural Gas Co. | Spraberry Area Field, Reagan County, Tex. | [1] 17.2295 | 18.0 | 14.5 |
| CS66-49 | Rodman Oil Co. | CI65-460 | 3 | do | Spraberry Trend Area, Upton and Reagan Counties, Tex. | 16.0 | 18.0 | 14.5 |
| CS66-50 | E. G. Rodman | G-14459 | 6 | do | Spraberry Trend Area, Midland County, Tex. | [2] 17.2295 | 18.0 | 14.5 |
| CS66-50 | do | CI63-525 | [3] 2 | do | Spraberry Trend, Area Upton County, Tex. | 16.0 | 18.0 | 14.5 |
| CS66-51 | E. G. Rodman (Operator), *et al.* | G-14518 | 1 | do | Jalmat and Drinkard Fields, Lea County, N. Mex. | [4] 15.5599 | 16.5 | [8] 13.5 |
| CS66-52 | Rodman Petroleum Corp. (Operator), *et al.* | G-14458 | 1 | do | Sweetie Peck Field, Midland County, Tex. | [5] 17.2295 | 18.0 | 15.5 |
| CS66-52 | Rodman Petroleum Corp. (Operator), *et al.* | CI61-111 [6] | 2 | Transwestern Pipeline Co. | Crawar Field, Ward County, Tex. | [7] 16.0 | 17.0 | 14.5 |
| CS66-132 | Midhurst Oil Corp. | G-10982 | [10] 2 | El Paso Natural Gas Co. and Pecos Co. | Jack Herbert Field, Upton County, Tex. | [9] 15.70925 | 16.5 | 14.5 |

[1] Subject to refund in Docket No. G-19952.

[2] Subject to refund in Docket No. RI60-6.

[3] Designated as a rate schedule of E. G. Rodman and W. D. Noel.

[4] Subject to refund in Docket No. G-19994.

[5] Subject to refund in Docket No. G-199[illegible]

[6] Temporary certificate.

[7] An increased rate of 17.0 cents per Mcf was suspended in Docket No. RI65-419 and not made effective.

[8] Plus applicable State and local production taxes in effect Sept. 1, 1965.

[9] Subject to refund in Docket No. RI60-103 (pertains to gas-well gas only).

[10] Covered sale of old gas-well gas and residue from casinghead gas.

**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## UNITED CITIES GAS COMPANY AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP67-146

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

**(Issued February 6, 1967)**

On November 22, 1966, United Cities Gas Company (Applicant), filed in Docket No. CP67-146 an application and supplement thereto on December 29, 1966, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Respondent) to establish physical connection of its facilities with facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution, all as more fully set forth in the application and supplement.

Applicant proposes to construct and operate a natural gas distribution system in the Village of Galatia, Illinois and environs. To supply the system with its requirements Applicant requests that the Commission order Respondent to establish physical connection of its 24-inch transmission line in Saline County, Illinois with the Applicant's system and to sell and deliver volumes of gas for resale and distribution by means of Applicant's proposed system.

The estimated number of customers, total peak day and annual requirements for the proposed service area at 14.73 psia for the first three years are:

| Year | Customers | Peak day Mcf | Annual Mcf |
|---|---|---|---|
| 1 | 162 | 193 | 13,567 |
| 2 | 199 | 261 | 19,407 |
| 3 | 221 | 304 | 23,624 |

Applicant has obtained a certificate of public convenience and necessity from the Illinois Commerce Commission.

The estimated cost of facilities for the third year of operation is $168,743, which Applicant proposes to finance from revenue generated internally, current funds on hand and short term loans, which will be replaced gradually by long term financing.

On November 23, 1966, Respondent was duly advised of the application filed in this proceeding, and due notice of the filing and opportunity for hearing thereon has been given by publication in the Federal Register on December 3, 1966 (31 F.R. 15204). No protest, petition to intervene or request for hearing has been filed in this proceeding.

On December 22, 1966, Respondent filed an answer to the application and indicated therein it had no objection to the entry of an order requiring it to establish the requested connection of its facilities and provide the requested service.

*The Commission finds:*

(1) Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 11, 1947, in Docket No. G-880 (6 FPC 171).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Texas Eastern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant up to 304 Mcf daily under a service agreement to be executed by Applicant with Texas Eastern in accordance with the Commission's Regulations.

(4) The requirement that Texas Eastern serve Applicant, as hereinafter ordered, will not place an undue burden upon Texas Eastern, require Texas Eastern to enlarge its transportation facilities, or impair Texas Eastern's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas at the proposed delivery point from Texas Eastern within one year from the date of the issuance of this order.

*The Commission orders:*

(A) Texas Eastern Transmission Corporation is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver to Applicant up to 304 Mcf daily, for distribution in the Village of Galatia, Illinois, and its environs, under a service agreement to be executed by Applicant with Texas Eastern in accordance with the Commission's Regulations. Such service shall be rendered pursuant to Texas Eastern's presently filed appropriate rate schedule.

(B) Texas Eastern shall report to the Commission in writing the date of commencement of service to Applicant at the proposed delivery point within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MOBIL OIL CORPORATION, DOCKET NO. RI65–41

### ORDER DENYING MOTION TO TERMINATE PROCEEDING

(Issued February 7, 1967)

Mobil Oil Corporation (Mobil) on August 11, 1966, filed a motion in Docket No. RI65–41 requesting the Commission to terminate the proceeding and relieve it of its refund obligation therein. Docket No. RI65–41 involves a proposed increased rate of 16.72295¢ per Mcf for a sale of gas under Mobil's FPC Gas Rate Schedule No. 259 to El Paso Natural Gas Company in the Permian Basin Area of Texas which was suspended and thereafter placed in effect subject to refund as of January 1, 1965. Mobil has collected $749 in Docket No. RI65–41 in excess of its underlying firm rate of 15.70925¢, the initial rate authorized under its permanent certificate. In support of its motion Mobil states that the amounts collected in excess of its firm rate are *de minimis* and that it was authorized by order issued May 12, 1966, in Docket No. CI66–876, to abandon the subject sale.

We have in the past terminated rate proceedings relating to abandoned sales when the potential refund obligation involved a *de minimis* amount and the just and reasonable rate for such sale had not yet been decided. The *de minimis* abandonment rule, however, has not previously been applied in situations where the Commission has determined the just and reasonable rate.[1] In such circumstances there is no justification for distinguishing between refunds relating to abandoned sales and those relating to continuing sales. We shall therefore deny Mobil's motion.

*The Commission orders:*

For the reasons set forth above Mobil's motion to terminate Docket No. RI65-41 is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CENTRAL ILLINOIS LIGHT COMPANY, DOCKET NO. E-7332

### ORDER AUTHORIZING ACQUISITION AND DISPOSITION OF FACILITIES

(Issued February 9, 1967)

This order authorizes Central Illinois Light Company (CILCO), pursuant to Section 203 of the Federal Power Act, to consummate the following transactions: (1) the exchange of certain electric properties with the City of Springfield, Illinois (City); and (2) the sale of certain other electric properties to the City, under an Installment Sale Agreement. An application was filed on January 13, 1967, and supplemented on January 20, 1967.

CILCO is incorporated under the laws of the State of Illinois with its principal place of business at Peoria, Illinois and operates an electric utility system in two non-contiguous areas in Illinois, centering in Peoria and Springfield, the two areas being connected by 138 kv and 34.5 kv transmission lines. The Peoria Division is much the larger and accounts for 85.0% of CILCO's revenues. Company-wide CILCO's installed generating capability totalled 493,645 kw as of the end of 1965. Its peak load during that year totalled 432,500 kw.

The City is a municipal corporation under the laws of the State of Illinois and is engaged in the generation and distribution of electric energy to approximately 26,000 customers in and around the City of Springfield, Sangamon County, Illinois. In parts of the service area, both within and without the corporate limits, the City and CILCO are in competition. The City currently generates virtually all its electric energy requirements. Its installed capacity at the end of the calendar year 1965 totalled 146,000 kw and its peak load during that year totalled 109,200 kw.

CILCO and the City entered into an Exchange Agreement on December 13, 1966. Under this Agreement, CILCO will exchange some of its electric distribution properties and customers which it has in the corporate limits of Springfield and in the neighboring Village of Jerome, for other electric distribution properties and customers of the City which are located outside of Springfield's northern corporate limits and which are also more distant from the City's generating plants.

According to the application the exchange of property agreement was determined upon consideration of the consumptive loads served and related retail operating revenues. In the light of these considerations CILCO is transferring about 2,450 customers to the City and receiving about 1,550 customers from the City.

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[1] Docket No. RI65-41 is consolidated in the show cause order issued concurrently with Opinion No. 468, 34 FPC 424, 159. The applicable area base rate ceiling for this sale under Opinion No. 468 would be 14.5¢ per Mcf, subject to quality adjustments.

CILCO represents that the estimated original cost of the facilities to be transferred to the City is $497,288, and the estimated original cost of the facilities to be transferred by the City to the Applicant is $497,000.

Under an Installment Sale Agreement entered into on December 27, 1966, CILCO has agreed to sell and Springfield has agreed to purchase certain other electric distribution properties which are located without the corporate limits of Springfield and all of the remaining electric distribution property of CILCO located within the City. These properties serve about 10,704 customers.

According to the application, these properties to be sold by CILCO have an original cost of $6,905,190. CILCO's pro forma balance sheet as of December 31, 1965, filed as part of its application, this figure is $6,900,000 rounded off and $2,000,000 for the estimated accumulated provision for depreciation related thereto resulting in an estimated net amount of $4,900,000.

The properties are to be sold by CILCO for a consideration of $11,800,000. The application states that this price was determined through arm's-length bargaining between representatives of CILCO and the City after the latter had obtained engineering studies and appraisals of the property to be purchased, with consideration being given by both CILCO and by the City to territorial boundary agreements and integrity of each party's service area.

The consideration of $11,800,000 for plant, which is said to have an estimated depreciated original cost of $4,900,000, will result in an estimated gross gain of $6,900,000 on the sale of plant. CILCO's pro forma balance sheet indicates that it proposes to credit $2,050,000 of the estimated gross gain to Account 236, Taxes Accrued, and credit the balance, $4,850,000, to Account 434, Miscellaneous Credits to Surplus.

The consideration of $11,800,000 is to be paid by the City in the following manner: (a) $3,000,000 in cash on March 1, 1967, and (b) $8,800,000 in installments over a period of ten years.

The initial payment is dependent upon the City obtaining such funds by the issuance of revenue bonds in conformance with the Illinois Municipal Code. If the City is unable to obtain such financing prior to March 1, 1967, then the Installment Sales Agreement shall become null and void.

The City has the right on March 1, 1968, and on any subsequent payment date, upon sixty days' prior notice to CILCO, to prepay the entire principal balance due, or any part thereof, with interest to that date, without penalty. The City's installments of principal and interest are payable solely from the revenue derived and to be derived from the operation of its electric system or from the sale of electric revenue bonds.

Within six months from the date of the consummation of the Exchange Agreement and Installment Sale Agreement, CILCO proposes to file any adjustments in the journal entries recorded upon its books.

As a result of the proposed transaction 13,154 customers (including three industrial customers) will be transferred to City and 1500 customers will be transferred to CILCO. The 13,154 customers to be transferred to the City will be served at City's rates which are approximately 15 percent to 25 percent lower than CILCO's rates. The 1500 customers to be transferred to CILCO will be served at CILCO's rates which are correspondingly higher than City's rates. The increase will be gradually put into effect over a period of 24 months. This provision has been filed with and approved by the Illinois Commerce Commission. Since City has no heavy industrial rate, the three large industrial customers which it will acquire will continue to be served at CILCO's existing rate.

Upon completion of the facility transfers the total load increase for the City will be 55,000 kw. This will enable the City to utilize fully a new 80,000 kw generating unit it is installing in 1968. CILCO and City propose to establish a 138 kv, 80 MVA interconnection at the Company's East Springfield Substation. With the transfer of the 55,000 kw of retail load to the City CILCO will employ its Peoria-Springfield transmission facilities to facilitate the 80 MVA interconnection without increasing transmission and substation facilities. Duplicating facilities will be eliminated and a new service area for further growth is provided to the City. The facilities to be transferred to CILCO are to the north of Springfield and will be replaced by facilities of equal annual revenue in Springfield and in the Village of Jerome to the south of Springfield, much closer to the City's generating facilities. The transaction will afford the City greater density of plant and customer service and allow greater efficiency and economy of operation.

The proposed transactions are essential parts of an overall settlement of all the outstanding differences between CILCO and the City. Concurrently, as part of the above-described transactions, the City has petitioned the Commission to withdraw its complaint in Docket No. E-7250 against CILCO, Central Illinois Public Service, Union Electric Company and Illinois Power Company. By order issued concurrently herewith in Docket No. E-7250, *City of Springfield, Illinois, et al.*, *infra*, p. 296, that proceeding is terminated. As more fully described in that order City and CILCO propose to undertake coordinated operation of their generation and transmission facilities through an Interchange Agreement dated December 27, 1966.

Written notice of the application has been given to the Illinois Commerce Commission and to the Governor of that State. Notice was also published in the Federal Register on January 24, 1967 (32 F.R. 830), stating that any person desiring to be heard or to make any protest with reference to said application should on or before February 6, 1967, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) CILCO owns and operates facilities which may be facilities for the transmission of electric energy in interstate commerce and it may be a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, CILCO will merge or consolidate its facilities which may be subject to the jurisdiction of the Commission with those of the City, another person, and will dispose of some of its facilities which may be subject to the jurisdiction of the Commission, all within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition and disposition of facilities by CILCO, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed acquisition and disposition of facilities by CILCO all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) CILCO shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and shall file within six months of the date of consummation of the proposed transaction its determinations of the original cost and the accumulated provision for depreciation for the properties involved in this transaction and shall reflect such information in the journal entries which are required by Account 102, Electric Plant Purchased or Sold.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## IDAHO POWER COMPANY, PROJECT NO. 1971

### ORDER AMENDING AND SUPPLEMENTING ORDERS PRESCRIBING FISH FACILITIES

(Issued February 9, 1967)

On December 28, 1966, Idaho Power Company, licensee for Project No. 1971, consisting of the Brownlee, Oxbow and Hells Canyon developments on the Snake River, filed a motion for issuance of a proposed order which would amend and supplement previous orders prescribing fish facilities for Project No. 1971. Together with the motion there were filed copies of a stipulation, concerning fish facilities for the project, entered into by the licensee, the United States Department of the Interior, and the fish and game agencies of the States of Idaho, Oregon and Washingon.

The stipulation proposes three principal changes to the provisions for fish facilities for the project. The first of these is enlargement of the experimental facilities at Rapid River to handle greater numbers of spring chinook. This modification of the orders issued December 11, 1963 (30 FPC 1471) and January 28, 1966 (35 FPC 162) is requested because of the larger number of adult chinook which arrived at the Hells Canyon site during the spring and summer of 1966. The second proposed change is to discontinue the transfer of steelhead trout to the Rapid River facilities because the experimental holding was not successful and facilities for artificial propagation of the species are provided elsewhere. The third change would relocate the Lemhi River steelhead trout facilities, provided for by the order issued January 28, 1966, to the Pahsimeroi River because of low water conditions on the Lemhi River.

The Commission staff has reviewed the proposed changes to the fish facilities for Project No. 1971 and concurs with the licensee and the agencies in the need for amending and supplementing previous orders prescribing fish facilities. Both the stipulation and staff's review note that future additions to the chinook salmon rearing facilities on Rapid River may be required depending on the size of future runs.

*The Commission finds:*

It is consistent with the public interest that an order be issued amending and supplementing previous orders prescribing fish facilities for Project No. 1971 pursuant to Article 35 of the license.

*The Commission orders:*

(A) Paragraphs (B), (C), and (D) (ii) of the Commission's order issued December 11, 1963 (30 FPC 1471) and Paragraph (C) of the Commission's order issued January 28, 1966 (35 FPC 162) are modified to provide for the alternate handling of spring chinook salmon and steelhead trout as provided herein, and for transporting to the Rapid River hatchery adult spring chinook salmon in numbers up to 2,700 fish. Adult fall chinook salmon and adult steelhead trout up to the capacity of the Oxbow holding facilities shall be transported by the Licensee to the Oxbow holding and sorting facilities. Adult fall chinook and adult steelhead trout in excess of the capacity of the Oxbow holding facility and immature (jack) migrants and adult spring chinook salmon in excess of the 2,700 fish capacity of the holding ponds at Rapid River shall be released in the Snake River below Oxbow Dam or in some other stream entering into the Snake River below Oxbow Dam, as determined by the fishery agencies, or made available to the fishery agencies for transportation and use as they deem desirable.

(B) Paragraph (B) of the Commission order of December 11, 1963 (30 FPC 1471) is amended to provide that the Licensee shall:

(i) Construct a temporary earthen holding pond with a capacity of 1,900 adult fish; said pond to be ready for operation by March 1, 1967.

(ii) Install additional incubating facilities capable of hatching approximately 1.0 million eggs and construct a temporary earthen rearing pond capable of rearing spring chinook to smolt size. The pond shall have a volume of at least 45,000 cubic feet. These facilities shall be completed and ready for operation by March 1, 1967.

(iii) Construct such additional spring chinook salmon rearing facilities at Rapid River as may be required in the future to handle the progeny of runs of adults exceeding 1500 fish. Such fish rearing facilities shall be constructed to specifications, either (a) stipulated to by Licensee and the fishery agencies, subject to approval by the Commission, with a copy of said stipulation to be filed with the Commission prior to construction, or (b) as may be ordered by the Commission on its own motion or at the request of any interested party, after notice and opportunity for hearing.

(C) Paragraph (D) of the Commission's order issued January 28, 1966 (35 FPC 162) is amended to read as follows:

> (D) For the conservation of the steelhead trout fishery resource, the Licensee shall:
>
> (i) Acquire the necessary land and construct and maintain fish hatchery and appurtenant facilities near Snake River in the vicinity of Buhl, Idaho, suitable for hatching from eggs and rearing to smolt size 200,000 pounds of steelhead trout annually, said hatchery and appurtenant facilities to be ready for operation by July 1, 1966;
>
> (ii) Acquire the required land and construct and maintain smolt holding (acclimation) ponds and appurtenant facilities in Lemhi or Custer County, Idaho, on the Pahsimeroi River, with an aggregate volume of 140,000 cubic feet, said ponds and appurtenant facilities to be ready for operation by March 1, 1967;
>
> (iii) Construct and maintain (a) upstream trapping facilities on the

Pahsimeroi River in Lemhi or Custer County, Idaho, above its confluence with the Salmon River, and (b) holding and sorting facilities and egg-eyeing facilities capable of incubating 3,300,000 steelhead trout eggs, together with appurtenant facilities, said facilities to be ready for operation by February 1, 1969;

(iv) Be responsible for annual transportation of smolts from the facilities near Buhl to the Pahsimeroi River facilities during a six weeks period each spring previous to smolting as determined by the Idaho Department of Fish and Game; and

(v) Contract with the Idaho Department of Fish and Game for operation, for a period of eight years, of the facilities prescribed in this Paragraph D, and for transportation to the Buhl facilities of eyed eggs from the Licensee's Oxbow hatchery or alternatively from the Pahsimeroi facilities; Licensee shall pay all reasonable costs of operation of facilities and transportation of eggs:

(vi) Provided, that on review and evaluation of the operation of the aforesaid facilities for steelhead trout, any changes, modifications, plans for continuing operations or termination, including disposition of facilities, at the end of the contract period, shall be made by stipulation of the Licensee and the interested State and Federal fishery agencies as approved by the Commission or by order of the Commission on its own motion or upon application of any interested party after opportunity for hearing.

(D) Paragraph (F) of the Commission's order issued January 28, 1966 (35 FPC 162) is amended to provide that the Licensee shall consult and cooperate with the fishery agencies in determining upon a mutually satisfactory program to be financed by the Licensee for the purpose of evaluating and recording the degree of success achieved, in terms of maintenance of the fishery resource, by the artificial propagation and other facilities required pursuant to Article 35 of the license for Project No. 1971. Should the Licensee and the fishery agencies be unable to agree upon the terms of the program, the Commission reserves the right to determine the same after notice and opportunity for hearing. The Licensee shall furnish to the Commission on a timely basis reports on evaluation studies and operations financed by the Licensee.

(E) The Licensee shall not commence construction of the additional facilities prescribed in Paragraph (C) hereof until the Commission shall have approved functional drawings which shall be prepared by Licensee in consultation with the Department of the Interior and the fish and game agencies of the States of Idaho, Oregon, and Washington.

(F) Nothing herein shall be construed as full compliance with the provisions of Article 35 of the license for Project No. 1971.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## THE MONTANA POWER COMPANY, PROJECT NO. 2188

### ORDER APPROVING AMENDED EXHIBIT L DRAWING FOR HEBGEN DEVELOPMENT OF PROJECT

(Issued February 9, 1967)

On July 26, 1966, The Montana Power Company, licensee for Missouri River Project No. 2188, filed for Commission approval an amended Exhibit L drawing for the Hebgen Development of the project to show the elimination therefrom of all generating units.

The Hebgen Development is located on the Madison River about six miles downstream from the confluence of the South Fork of the Madison with the Madison River, and consists of: an earth and rock fill dam creating a reservoir with a capacity of 345,000 acre-feet of usable storage; a 50 horsepower and 150 horsepower generating unit used for station power and lighting and caretaker quarters; and appurtenant facilities. This generating capacity is not included in the capacity component for computing annual administrative charges under the license for the project.

The licensee advises that the elimination of the aforementioned generating units is necessary and desirable. Since 1959 the licensee has extended a 12.5 kv electric distribution line (originally constructed to provide power to the U.S. Forest Service and others in the area) to serve the Hebgen Development.

*The Commission finds:*

Amended Exhibit L drawing (FPC No. 2188–94) conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and license Exhibit L drawing (FPC No. 2188–86) which is superseded, should be eliminated from the license for the project.

*The Commission orders:*

(A) The amended Exhibit L drawing designated in the above finding is hereby approved as part of the license for Project No. 2188, and the license Exhibit L drawing mentioned in the same finding is hereby eliminated from the license for the project.

(B) Paragraph (b)(9) of the license order for Project No. 2188, issued April 23, 1956, 15 FPC 1330, 1332, is hereby modified to read as follows:

> (9) The constructed Hebgen development, located about 6 miles below the confluence of the South Fork of the Madison with the Madison River near Yellowstone National Park, consists of an earth and rock fill dam, creating a reservoir with a capacity of 345,000 acre-feet of usable storage.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PUBLIC UTILITIES AND LICENSEES—TRANSMISSION LINE STATISTICS IN ANNUAL REPORT FPC FORM NO. 1, DOCKET NO. R–315

## ORDER NO. 335

### PRESCRIBING ON A PERMANENT BASIS CERTAIN INSTRUCTIONS HERETOFORE PRESCRIBED FOR THE REPORTING YEAR 1964 ONLY

(Issued February 9, 1967)*

The schedule "Transmission Line Statistics" on page 442 of the annual report F.P.C. Form No. 1, provides for the furnishing of information with respect to each transmission line operated by the public utility or licensee required to make the report by § 141.1(b) of the Regulations under the Federal Power Act.

Acting upon the request of members of the industry affected, the Commission on March 16, 1965, amended the instructions in that schedule, on a trial basis for the reporting year 1964 only, to permit reporting of the statistics for each transmission line having a nominal voltage of 132 kilovolts in lieu of the then existing requirement that statistical information be supplied with respect to each line having a nominal voltage of 110 kilovolts.[1] The result of this action was to eliminate a considerable amount of detail since its effect was to permit the grouping of data for lines of less than 132 kilovolts rather than only those of less than 110 kilovolts. We have received no complaints from other possibly interested persons, organizations or agencies concerning the reduction in the reporting of details authorized in our 1965 order.

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*Published in the Federal Register on February 14, 1967 (32 F.R. 2845).

We have recently received a request from the Public Utility Committee of the Advisory Council on Federal Reports and relayed to us by the Bureau of the Budget that the change now be made permanent, *i.e.*, that the revised instructions which we prescribed for the reporting year 1964 only be made effective for the reporting year 1966 and thereafter. The information received on these schedules for 1964 and 1965[2] demonstrates that the less detailed data is adequate for our purposes and, consequently, that the reporting permitted for 1964 should be continued.

*The Commission finds:*

(1) The amendment to Annual Report F.P.C. Form No. 1 herein adopted is necessary and appropriate for the purposes of the Federal Power Act.

(2) Since the amendment relieves affected parties of an existing requirement, it is unnecessary to comply with the notice and effective date provisions of section 4 of the Administrative Procedure Act.

*The Commission*, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 304, 309 and 311 thereof (49 Stat. 855, 858, 859; 16 U.S.C. 825c, 825h, 825j), ***orders:***

(A) Effective for the reporting year 1966 and thereafter, Annual Report F.P.C. Form No. 1, required by § 141.1(b), Subchapter D, Chapter I of Title 18, Code of Federal Regulations, to be filed by public utilities and licensees, subject to the jurisdiction of the Federal Power Commission, is amended by amending instruction paragraphs 1. and 3. to the schedule "Transmission Line Statistics," on page 442 of the said Form No. 1 to read as follows:

Transmission Line Statistics

1. Report information concerning transmission lines, cost of lines, and expenses for year. List each transmission line having nominal voltage of 132 kilovolts or greater. Transmission lines below these voltages may be reported in group totals only for each voltage.

* * * * * * *

3. Data may be reported by individual lines for all voltages if so required by a state commission.

[Secs. 304, 309, 311, 49 Stat. 855, 858, 859; 16 U.S.C. 825c, 825h, 825j]

(B) This amendment shall be effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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[1] Order No. 294 in Docket No. R-270, 33 FPC 569, 30 F.R. 3707, March 20, 1965.

[2] With respect to the reporting year 1965, some reports received were on the 1964 temporary basis, others gave the more detailed data theretofore required. All have been accepted for filing without question.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## REFUND CONDITIONS IN TEMPORARY CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY ISSUED TO INDEPENDENT PRODUCERS OF NATURAL GAS, DOCKET NO. R-316

### ORDER NO. 336

### STATEMENT OF GENERAL POLICY

(Issued February 9, 1967)*

By decision issued January 23, 1964, the United States Court of Appeals for the District of Columbia Circuit held that the Commission had power, in the issuance of permanent certificates to independent producers of natural gas, to require refunds of all or a portion of excess amounts collected under temporary certificates granted without express refund conditions. *Public Service Commission of New York* v. *F.P.C.*, 329 F. 2d 242, cert. denied *sub nom. Pralo Oil Co.* v. *F.P.C.*, 377 U.S. 963 (1964).

By a decision issued December 9, 1966, the United States Court of Appeals for the Tenth Circuit held that refunds could not be ordered under temporary certificates lacking express refund conditions, thereby creating an apparent conflict with the decision of the District of Columbia Circuit. *Sunray DX Oil Company* v. *F.P.C.*, Nos. 7781, *et al.*, 370 F. 2d 181.

In view of this situation and for the purpose of protecting consumers from "out-of-line" rates, the Commission has determined as a matter of policy to include an express refund condition in temporary certificates hereafter issued to independent producers of natural gas authorizing sales in areas where just and reasonable rates have not been determined. This policy will be maintained until the apparent conflict between the decisions of the Courts of Appeal is resolved.

*The Commission finds:*

(1) The statement issued herein concerns a matter of general policy which does not require notice or hearing under section 4(a) of the Administrative Procedure Act.

(2) It is appropriate and in the public interest in administering section 7 of the Natural Gas Act to set forth the Commission policy with respect to the matter here under consideration.

*The Commission*, acting under the authority of the Natural Gas Act, as amended, particularly sections 7(c), 7(e) and 16 thereof (52 Stat 825, 830; 56 Stat. 83; 15 U.S.C. 717f(c), 717f(e), 717o), *orders:*

(A) Effective upon the issuance of this order, Part 2, General Policy and Interpretations, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding a new § 2.63 to read as follows:

§ 2.63 Express refund conditions in certain temporary certificates of public convenience and necessity issued to independent producers of natural gas.

For the purpose of protecting consumers from the exaction of out-of-line rates, temporary certificates authorizing sales of natural gas by independent producers in areas where just and reasonable rates have not been determined will contain an express refund condition fixed at a level two cents below the applicable guideline rate set forth in the Statement of General Policy No. 61-1, as amended (§ 2.56

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*Published in the Federal Register on February 14, 1967 (32 F.R. 2844).

of this part), or the previously determined applicable in-line rate, whichever is lower, together with a proportional adjustment for Btu's of less than 1000 per cubic foot, measured on a wet basis.

(Secs. 7, 16, 52 Stat. 825, 830; 56 Stat. 83; 15 U.S.C. 717f(c), 717f(e), 717(o))

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITY OF SPRINGFIELD, ILLINOIS v. ILLINOIS POWER COMPANY, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, UNION ELECTRIC COMPANY AND CENTRAL ILLINOIS LIGHT COMPANY,

## DOCKET NO. E-7250

### ORDER PERMITTING WITHDRAWAL OF COMPLAINT

(Issued February 9, 1967)

This order grants the petition of the City of Springfield, Illinois (Springfield) for permission to withdraw its complaint and terminates the above-entitled proceeding. Springfield's petition for withdrawal reflects a settlement of the issues raised by the City's complaint filed on October 11, 1965 against Illinois Power Company, Central Illinois Public Service Company, Union Electric Company, and Central Illinois Light Company.

That complaint, filed pursuant to the provisions of Sections 202(b), 205, 206, and 207 of the Federal Power Act, requested that the Commission alternatively direct (1) members of the Illinois-Missouri Pool (Illinois Power Company, Central Illinois Public Service Company and Union Electric Company), or (2) Illinois Power Company or (3) Central Illinois Light Company (CILCO) to establish physical connection of their transmission facilities with the facilities of Springfield and to sell energy to or exchange energy with Springfield. Answers to Springfield's complaint were filed by Central Illinois Public Service Company on December 13, 1965, by Illinois Power Company on December 14, 1965 and by Union Electric Company and CILCO on December 15, 1965. Conferences held among the parties and Commission staff led to the settlement proposal.

Under the settlement proposal Springfield would establish a 138 kv, 80 MVA interconnection with CILCO at the latter's East Springfield Substation replacing an existing 34.5 kv interconnection at East Springfield. Through the proposed interconnection CILCO will provide capacity and energy to Springfield in accordance with an Interchange Agreement between the parties dated December 27, 1966. That Agreement, filed in support of Springfield's petition for withdrawal, contemplates that Springfield and its interconnecting systems will operate coordinately as the Springfield Pool. CILCO is now interconnected with and coordinates its operations with members of the Illinois-Missouri Pool (Central Illinois Public Service Company, Illinois Power Company and Union Electric Company). Springfield currently interconnects with the municipally-owned electric system of Jacksonville, Illinois, and the cooperatively-owned generation and transmission system of Western Illinois Power Cooperative, Jacksonville, Illinois.

For system planning purposes and coordination with the Illinois-Missouri Pool, Springfield's capacity reserve obligations will be computed on a basis comparable to that which is observed by CILCO the greater of 15% of load or 50% of the largest generating unit.[1] Springfield's inability to resolve with CILCO the City's capacity reserve obligation led to the filing of the complaint in this matter. Additionally, the Interchange Agreement contemplates that Springfield and CILCO will provide capacity, energy, economy, emergency and maintenance service to each other. Upon termination of this proceeding and completion of related transfer and exchange of facilities, described hereafter, the Interchange Agreement will be included in a rate schedule submittal by CILCO.

At the time of filing its complaint, Springfield owned and operated an electric generation and distribution system serving the inhabitants of the City of Springfield. Pursuant to prior contractual arrangements Springfield interconnected with CILCO at 34.5 kv at the latter's East Springfield Substation, a 25 MVA interconnection. Springfield was not required to maintain any reserve generating capacity by the contract, the contract being subject to termination on three months' notice.

Springfield's petition to withdraw its complaint was filed January 13, 1967 pursuant to Section 1.11(d)(2) of the Commission's Rules of Practice and Procedure. By letter filed February 3, 1967, counsel for Illinois Power Company stated that it does not object to the requested withdrawal. Similar letters were submitted upon behalf of Central Illinois Public Service Company and Union Electric Company on February 6 and 9, 1967, respectively.

Springfield states in its petition for withdrawal that in addition to the Interchange Agreement, the parties have entered into an Exchange Agreement dated December 13, 1966, providing for the exchange between Springfield and CILCO of certain electric facilities and customers located in and around the City of Springfield, and an Installment Sale Agreement dated December 27, 1966, providing for the sale by CILCO and the purchase by Springfield of certain facilities included in CILCO's electric distribution system located in and around the City of Springfield and for the establishment of service boundaries to improve efficiency and eliminate duplication of facilities. Springfield advises that these Agreements support its action in petitioning to withdraw the complaint, and unless they are effective the City would not seek such withdrawal. The Interchange Agreement by its terms is to be effective on the 27th day of December, 1966, for a period of 10 years and to continue thereafter unless terminated on 4 years' advance written notice given by either party to the other or on such notice as may be agreed to by the parties. By separate order issued concurrently herewith, *Central Illinois Light Company*, Docket No. E-7332, *supra*, p. 287, the Commission is authorizing CILCO under the provisions of Section 203 of the Federal Power Act to consummate facility transfer transactions provided for in the Exchange Agreement and the Installment Sale Agreement, respectively.

*The Commission finds:*

It is necessary and appropriate for the purposes of the Federal Power Act and the Commission's Rules of Practice and Procedure, and good cause has been shown to permit withdrawal of the complaint of the City of Springfield, Illinois filed October 11, 1965 and to terminate this proceeding.

*The Commission orders:*

Permission is granted for the City of Springfield, Illinois to withdraw its complaint filed October 11, 1965 and the above-entitled proceeding is terminated.

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[1] For Springfield computed on the basis of generating units in the Springfield Pool, Springfield's being the largest.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSWESTERN PIPELINE COMPANY, DOCKET NOS. CP66-292 AND CP67-106

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 9, 1967)

On March 17, 1966, Transwestern Pipeline Company (Applicant) filed in Docket No. CP66-292 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the purpose of attaching additional gas reserves in the Permian Basin area of West Texas, all as more fully set forth in the application and amendments.

Applicant initially requested authorization to install and operate facilities necessary to attach additional gas reserves in the West Waha Field, Reeves County, Texas (hereinafter referred to as the West Waha reserves), and in the HSA Penn Field, the Sand Hills San Andres Field, the North Ward-Estes (Yates) Field, the South Ward Upper Penn Lime Field, the Waha Devonian Field and the Worsham Cherry Canyon, Devonian and Pennsylvanian Fields, Crane, Ward and Reeves Counties, Texas (hereinafter collectively referred to as the Crane, Ward and Reeves County reserves). The facilities requested to attach the West Waha reserves consisting of approximately 11.9 miles of 16-inch pipeline together with related facilities which were changed in the first amendment to 20-inch. The facilities requested to attach the Crane, Ward and Reeves County reserves consisting of approximately 10.43 miles of 16-inch and 13.91 miles of 12-inch pipeline together with related facilities were deleted in the second amendment.

The total estimated cost of Applicant's initial proposed facilities is $2,852,000, which cost would be financed out of funds generated from Company operations.

Independent producer applications have been filed by Gulf Oil Corporation in Docket Nos. CI65-464, CI65-466, CI65-467 and CI65-468 requesting authorization to sell the subject gas to Transwestern. These applications are being disposed of by separate orders issued concurrently herewith.

On October 20, 1966, Applicant filed in Docket No. CP67-106 an application for a certificate of public convenience and necessity authorizing the construction and operation of approximately 13.9 miles of 16-inch pipeline, approximately 1.6 miles of smaller sized gathering lines for individual well connections and related pipeline facilities, all in the West Rojo Caballos Field in Pecos and Reeves Counties, Texas. The proposed lateral facility will connect with the West Waha lateral, the authorization for which is now pending in Docket No. CP66-292.

The total estimated cost of the facilities in Docket No. CP67-106 is $748,000, which cost will be financed out of funds generated from company operations.

On October 14, 1966, Applicant filed an amendment to its certificate application in Docket No. CP66-292 requesting authority to change the West Waha lateral from 16-inch to 20-inch in order to be able to transport to its 24-inch West Texas lateral the additional volume contracted for as shown in Docket No. CP67-106. The proposed 20-inch line and its appurtenances will cost approximately $975,226, an increase of $270,000 over the initial 16-inch line.

Independent producer applications have been filed by Texaco Inc. in Docket No. CI67-464, by Forest Oil Corporation and Timbuck Company in Docket No. CI67-481, and by Pennzoil Company in Docket No. CI67-662, all requesting authorization to sell the subject gas in West Rojo Caballos Field to Transwestern. These applications are being disposed of by separate orders issued concurrently herewith.

On December 27, 1966, Applicant filed its second amendment to the application in Docket No. CP66–292, and seeks thereby to delete from its proposals in said docket the request for authority to construct and operate a gas supply lateral comprised of 24.3 miles of 12 and 16-inch pipeline originally proposed to attach certain gas reserves owned by Gulf Oil Corporation in the HSA Penn and South Ward Fields, and in the Sand Hills Field. This request assertedly stems from the cancellation of the gas purchase agreement covering approximately 259,781 MMcf in the Sand Hills Field (Gulf has withdrawn its application in Docket No. CI65–468). This will result in the reduction of the cost of the facilities requested in Docket No. CP66–292 by $1,496,000 to a total cost of $1,626,000, and will decrease the proven gas reserves to be attached by 353,226 MMcf to a total of 403,047 MMcf.

After due notice of the filing of the applications in Docket Nos. CP66–292 and CP67–106, a Notice of Intervention was filed by the State of California and the Public Utilities Commission of the State of California in Docket No. CP66–292. Subsequently thereto on December 30, 1966, the State of California and the Public Utilities Commission stated it had no objection to the issuance of a certificate to the Applicant in Docket No. CP66–292 pursuant to the shortened procedure provided for by the Commission's Rules of Practice and Procedure. Similarly Gulf Pacific Pipeline Company and Pacific Lighting Service and Supply Company, Southern California Gas Company and Southern Counties Gas Company filed petitions to intervene on April 21, 1966, and subsequently stated on December 12 and 19, respectively, that they had no objection to the issuance of a certificate of public convenience and necessity to the Applicant in Docket No. CP66–292 pursuant to the Commission's shortened procedure. No other petition to intervene, notice of intervention or protest to the granting of the applications have been filed in these proceedings.

At a hearing held on February 2, 1967, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, amendments and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 10, 1963, in Docket No. CP63–290 (30 FPC 997).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the applications, amendments and exhibits filed in these proceedings are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates issued hereinafter be conditioned so as to provide that the issuance thereof shall not alter, amend or modify the condition concerning the amount to be included for prepaid gas in rate determinations set forth in ordering paragraph (E) of the Commission's order issued July 26, 1966, accompanying Opinion No. 500, in Docket No. CP63-204, *et al.*, 36 FPC 176.

*The Commission orders:*

(A) Certificates of public convenience and necessity are issued to Applicant in these proceedings authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the applications in Docket No. CP66-292 and Docket No. CP67-106, amendments and exhibits filed in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months after the issuance of this order.

(D) The issuance of certificates of public convenience and necessity in Docket Nos. CP66-292 and CP67-106 will not alter, amend or modify the condition concerning the amount to be included for prepaid gas in rate determinations set forth in ordering paragraph (E) of the Commission's order issued July 26, 1966, accompanying Opinion No. 500, in Docket No. CP63-204, *et al.*

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CONSUMERS POWER COMPANY, DOCKET NO. E-7330

### ORDER AUTHORIZING ISSUANCE OF COMMON STOCK

(Issued February 10, 1967)

Consumers Power Company (Applicant), filed an application on January 9, 1967, pursuant to Section 204 of the Federal Power Act seeking authority to issue 2,056,756 additional shares of its Common Stock without par value to the holders of its outstanding common stock as a stock dividend. Applicant is incorporated under the laws of the State of Maine and is qualified to do business in Michigan with its principal place of business at Jackson, Michigan, and is engaged in the generation, purchase, distribution and sale of electricity in 1,522 communities and townships including rural areas, and in the purchase, distribution and sale of natural gas in 658 communities and townships all in the State of Michigan.

Applicant states that it proposes to issue the additional shares of Common Stock on April 3, 1967, to the holders of the outstanding common stock of Applicant as of March 3, 1967, at the rate of one share for each ten shares held as of that date. There will be no proceeds in connection with the proposed issuance of Common Stock.

Application shows that on Applicant's books, its outstanding 20,567,560 shares of no-par common stock is recorded at $317,187,208 as of October 31, 1966, and Applicant had a balance of $179,346,677 in its Unappropriated Earned Surplus as of that date. To record the payment of the stock dividend, Applicant proposes to transfer $92,554,020 from Unappropriated Earned Surplus to Common Stock. This amount has been determined by valuing the 2,056,756 additional shares at $45 a share. This, according to the application, being the fair value of said shares and the approximate market value thereof at the date of the declaration of the dividend, adjusted for said dividend. Expenses estimated at $250,000 in connection with the additional shares will be charged to Capital Stock Expense.

Applicant states that no person has received or is entitled to a fee from the Applicant for services (other than attorneys, accountants and similar technical services) in connection with the issuance of the Common Stock.

Applicant also states that it believes it is in the best interests of the Company, its customers and stockholders that a portion of the Unappropriated Earned Surplus (Retained Earnings) be permanently employed in the business.

Written notice of the application has been given to the Michigan Public Service Commission and the Governor of that State. Notice has also been published in the Federal Register on January 20, 1967 (32 F.R. 695), stating that any person desiring to be heard or to make any protest with reference to the application shall file petitions or protests on or before February 1, 1967 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received. The Michigan Public Service Commission by its order issued February 2, 1967, approved the issuance of the additional shares of Common Stock.

*The Commission finds:*

(1) The Applicant owns and operates facilities which may be facilities for the transmission of electric energy in interstate commerce and it may be a public utility within the meaning of that term as used in Section 204 of the Federal Power Act.

(2) The proposed issuance of Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Common Stock, described above, will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of 34.1a(a)(1) thereof.

(5) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

*The Commission orders:*

(A) The proposed issuance of 2,056,756 shares of Common Stock, without par value, upon the terms and conditions and for the purposes set forth in the application, is hereby authorized, subject to the provisions of this order.

(B) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CONSUMERS POWER COMPANY, PROJECT NO. 2436

### ORDER AMENDING LICENSE ORDER ON REHEARING

(Issued February 10, 1967)

Pursuant to application therefor, the Commission granted rehearing to Consumers Power Company (Applicant) on the Commission's January 4, 1966 order, 35 FPC 23, issuing a license to Applicant for constructed Project No. 2436. Applicant objects to Article 32 of the license order which provides for fixed minimum flow releases into the Au Sable River at the Foote dam of Project No. 2436 in the interest of protecting fishery resources. The article provides for a discharge of a minimum flow of 333 cfs (or the inflow into the reservoir, whichever is less) at all times into the Au Sable River.

Applicant requests modification of Article 32 by changing the measurement of minimum flow from 333 cfs to the flow occurring when a turbine gate opening of 14 percent is maintained on one generating unit at all times. The resulting flow would approximate 333 cfs. Applicant states that there are no means available at the Foote plant to accurately measure the discharges, and therefore proposes the gate opening method of measurement. It further proposes to amend Article 32 to provide for temporary interruptions of streamflow due to operating or other emergencies beyond the licensee's control and for modifications of minimum releases for short periods of time upon agreement between the licensee and the Michigan Department of Conservation.

*The Commission finds:*

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791a–825r), that the license order issued January 4, 1966 for Project No. 2436 be amended as hereinafter provided.

*The Commission orders:*

Article 32 of the January 4, 1966 license order for Project No. 2436 is hereby amended to read as follows:

> *Article 32.* The Licensee shall discharge a minimum flow equal to that occurring when a turbine gate opening of 14 percent is maintained on one generating unit (or the inflow into the reservoir, whichever is less) at all times from the reservoir into the Au Sable River: *Provided*, that such flows

may be modified temporarily if required by operating emergencies and other emergencies beyond the control of the Licensee, and for short periods of time in the interest of recreation and protection of fishery resources upon mutual agreement between the Licensee and the Michigan Department of Conservation: *Provided, further*, that such flows may be adjusted by further order of the Commission, upon recommendation of the Michigan Department of Conservation, the Secretary of the Interior or the Licensee, after notice and opportunity for hearing.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## GEORGE DESPOT, AGENT (OPERATOR), ET AL., DOCKET NO. CI65-974, ET AL.; CONTINENTAL OIL COMPANY, DOCKET NO. CI66-1099

### ORDER DENYING MOTION FOR SEVERANCE AND REJECTING OFFER OF SETTLEMENT

(Issued February 13, 1967)

On November 25, 1966, Continental Oil Company (Continental) submitted an offer of settlement in Docket No. CI66-1099 and a motion to sever said proceeding from the consolidated proceeding in Docket No. CI65-974, *et al.* In its application filed May 9, 1966, in Docket No. CI66-1099 Continental requests *nunc pro tunc* a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company from the Brown-Bassett Field, Terrell County, Texas. Said sales were commenced April 22, 1961, pursuant to a contract dated August 2, 1960, without Commission authorization. The sales were terminated March 19, 1965, due to depletion of reserves.

By order issued October 3, 1966, 36 FPC 714, in Docket No. CI65-974, *et al.*, the application pending in Docket No. CI66-1099 was consolidated with the pending proceeding in the former docket. The proceeding in Docket No. CI65-974, *et al.*, is on an Order to Show Cause issued September 14, 1966, 36 FPC 628, in which the respondents therein are required to show cause why they should not apply for and obtain certificates and make certain refunds for sales commenced without Commission authorization. Said order is based upon the decision in *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366.

In its offer of settlement Continental proposes to accept a certificate *nunc pro tunc* and refund all amounts collected from the date deliveries commenced for the captioned sale in excess of the "in-line" price of 16.5¢ as determined by Opinion No. 468, 34 FPC 159. Continental's contract for the subject sale provides for an initial rate of 15.5 cents per Mcf with a periodic escalation to 16.5 cents per Mcf on August 1, 1964. Continental submits that the 16.5-cent rate is the "in-line" rate for the subject sale and proposes to refund to the gas purchaser an amount attributable to quality deviations, in accordance with Opinion No. 468, calculated from the 16.5-cent base rate. Continental does not indicate whether it intends to pay interest on the refunds or whether the purchaser concurs in the proposal.

The offer of settlement must be rejected. Continental predicates its offer of settlement on the assumption that the applicable in-line price at the date the deliveries commenced is controlled by the terms of Opinion No. 468. That opinion makes the applicable rate depend upon the date of the gas purchase contract, which was August 2, 1960, in the case of Continental, a date prior to the cut-off date of January 1, 1961, as set forth in Opinion No. 468. Consequently, 16.5¢ is not the correct measure for determining refunds wherever Opinion No. 468 is controlling and the gas purchase contract was entered into prior to January 1, 1961. Thus, it is apparent that the amount of refunds due herein would be substantially greater than proposed by Continental. Continental's offer would constitute an exception to the rates found to be proper in Opinion No. 468, without an adequate consideration of or justification for such an exception. According to Opinion No. 468 the applicable area base rate for sales under contracts dated prior to January 1, 1961, is 14.5¢ per Mcf and not 16.5¢ per Mcf.

As a respondent to the above-captioned proceedings, Continental of course will retain its right to offer whatever other legal and equitable considerations it may desire to present to the Commission before the record is closed herein.

*The Commission finds:*

The offer of settlement submitted by Continental is not in the public interest and appropriate to carry out the provisions of the Natural Gas Act.

*The Commission orders:*

The offer of settlement submitted by Continental is rejected and the motion to sever is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP67-141; AND CASCADE NATURAL GAS CORPORATION, DOCKET NO. CP67-154

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 13, 1967)

On November 14, 1966, in Docket No. CP67-141, as supplemented January 6, 1967, and on December 1, 1966 in Docket No. CP67-154, El Paso Natural Gas Company (El Paso) and Cascade Natural Gas Corporation (Cascade), respectively, each filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Rio Blanco County, Colorado, and the transportation and delivery of natural gas, on an exchange basis, all as more fully set forth in the respective applications in these proceedings.

The applications indicate that Cascade has a new supply of gas in the Elk Springs and Winter Valley Fields, Moffatt County, Colorado, which supply is in the vicinity of El Paso's Piceance Creek lateral line in Rio Blanco County.* In order to make available to Cascade this new supply of gas, Applicants have entered into an exchange agreement, dated October 4, 1966, providing for the delivery of gas by Cascade to El Paso at a point located on El Paso's Piceance Creek lateral (delivery point) approximately 28.7 miles downstream from El Paso's Compressor Station No. 24 and the delivery of like quantities of gas by El Paso to Cascade at a point near the discharge side of El Paso's Station No. 24 (redelivery point). The agreement further provides that El Paso shall not be required to receive in excess of 6,000 Mcf of gas (15.025 psia) in any single day and that El Paso shall use its best efforts to deliver to Cascade like daily quantities of gas. Cascade will pay El Paso 1.5 cents per Mcf of gas delivered by El Paso to Cascade at the redelivery point.

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*By order issued concurrently in Docket No. CI67-402, the producer in those fields, Continental Oil Company, has been authorized to sell gas to Cascade.

In order to effect the proposed exchange of gas El Paso will construct and operate a tap and appurtenant facilities at the delivery point on its Piceance Creek lateral and metering and regulating facilities at the redelivery point at Station No. 24. Cascade will construct and operate a tap and metering facilities at the delivery point to El Paso. The estimated costs of El Paso's and Cascade's facilities are $15,000 and $3,770, respectively, which costs are to be financed from working funds and funds on hand.

Applicants state that the subject proposal will make available to Cascade quantities of natural gas without the necessity of Cascade constructing facilities which would practically duplicate El Paso's existing facilities proposed to be used to effectuate the proposed exchange.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the respective applications has been filed.

At a hearing held on February 9, 1967, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, supplement and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) Applicant, Cascade Natural Gas Corporation, a Washington corporation having its principal place of business in Seattle, Washington, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 12, 1966, in Docket No. CP66–371 (36 FPC 421).

(3) The facilities hereinbefore described, as more fully described in the applications in these proceedings, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicants are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicants are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(7) In accordance with Part 154 of the Commission's Regulations, Applicants should make appropriate rate filings with the Commission covering the proposals hereinafter authorized.

*The Commission orders:*

(A) Certificates of public convenience and necessity are issued authorizing Applicants, El Paso Natural Gas Company and Cascade Natural Gas Corporation, to construct and operate the proposed facility and to transport and deliver natural gas, on an exchange basis, as hereinbefore described, all as more fully described in the applications in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas, on an exchange basis, authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by June 1, 1967.

(D) In accordance with Part 154 of the Commission's Regulations, Applicants shall make appropriate filings with the Commission covering the proposals authorized in paragraph (A) above.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP66-12

### ORDER DENYING MOTIONS FOR RECONSIDERATION

(Issued February 13, 1967)

Texas Eastern Transmission Corporation (Texas Eastern) and, jointly, Consolidated Gas Supply Corporation, The East Ohio Gas Company, The Peoples Natural Gas Company and The River Gas Company (Consolidated) filed on January 3 and 4, 1967, respectively, motions requesting that we reconsider our Order Rejecting Settlement Offer issued on December 5, 1966, 36 FPC 959. Movants seek the entry of an order approving the settlement proposal previously tendered by them which we found it would not be in the public interest to approve.

Staff Counsel filed an answer opposing these motions on January 14, 1967. No other pleadings relating to the requested reconsideration have been received.

Texas Eastern asserts that our action in rejecting this settlement agreement was defective in several respects. Thus it is alleged that we should have, but did not, consider the merits of the settlement; erroneously assumed that a decision in this case would establish a precedent of general applicability; should not have given any weight to the failure of the settlement to provide guidance with respect to the ultimate disposition to be made of other retained refunds and either prejudged the issue of our legal authority or ignored the legitimate interest of Texas Eastern's customers in the immediate receipt of 69 percent of all present and future refunds.

Consolidated contends that the settlement is adequate and reasonable as a dollar compromise; that it encompasses both Texas Eastern's offer to refund substantial sums and binding agreements by all of its jurisdictional pipeline customers to flow-through 100% of all refunds received under the terms of the agreement; would establish a pattern for the disposition of other retained refunds which is the practical equivalent of a precedent and, finally, would obviate the need for extensive litigation in ancillary equitable entitlement proceedings concerned with the relative rights of Texas Eastern's pipeline customers and their respective distributor customers.

We have analyzed these objections, and conclude that they are lacking in merit under the circumstances of this proceeding. However, in view of the fundamental nature of the questions raised with respect to our role in the approval of negotiated rate settlements, we deem it appropriate to address ourselves to the major arguments made by movants.

At the outset, we call attention to the fact that this is not a settlement which bears the endorsement of all parties having an interest in the proceedings in Docket No. RP66-12. The Philadelphia Electric Company, an immediate jurisdictional purchaser of gas for resale from Texas Eastern, and the California Public Utilities Commission have urged outright rejection of the settlement agreement.

Furthermore, this does not appear to be a proceeding in which the desire of Consolidated or other pipeline customers of Texas Eastern for a settlement in lieu of litigation can be given the same weight we would normally accord to that circumstance. For these pipelines are not actually adverse parties in interest. Rather, they appear to be generally in accord with Texas Eastern's position that it legally owns the retained refunds. A similar situation prevails with respect to those of Texas Eastern's state regulated distributor customers who are legally obligated to flow-through the refunds received under the automatic operation of their so-called "purchased gas adjustment" clauses.

We are also unable to subscribe to Texas Eastern's and Consolidated's apparent belief that we must approve every settlement submitted for our consideration unless we can make an affirmative finding that it does not constitute a fair and reasonable dollar compromise of the disputed issues. Certainly, *Michigan Consolidated Gas Co.* v. *F.P.C.*, 283 F. 2d 204, 226 (CADC-1960), cert. den., 364 U.S. 913, relied upon by movants does not so hold. In that certificate proceeding the court did not suggest we were compelled to approve a dollar settlement in a case of novel but significant import prior to hearing or initial decision. It found fault only with our failure to consider a proposal submitted by a party after the record was closed as a legitimate alternative method of meeting the public interest merely because of its rejection by another party. Here our December 5, 1966 order expressly recited the "careful consideration" we had given the settlement and stated specifically our reasons for concluding that this was not an appropriate case for resorting to the settlement route.

We also believe that the movants err in assuming that the determination of the issues in this case in the context of a litigated proceeding could not resolve the fundamental and far-reaching questions of policy and law presented concerning the disposition of refunds created by our own process. In saying this, we are not unmindful of the fact that questions as to the terms of specific settlement contracts and of our orders approving them have also been raised in this case. But, we believe that as the Fifth Circuit Court of Appeals stated in *Texas Eastern Transmission Corp. and Natural Gas Pipeline Company of America* v. *F.P.C.*, 357 F. 2d 232, 239 (1966):

> * * * The dimensions of the problem, including particularly the responsibility of the Commission to discharge its statutory duty to protect the public interest, *require that the Commission give full consideration to all of*

> *the relevant legal and policy issues.* We do not see how the Commission can accomplish that purpose without a searching inquiry into all of the conflicting considerations against a backdrop of cold facts, practical consequences and statutory purposes. [Emphasis added.]

The fact that we are unwilling to settle this proceeding at the expense of losing an opportunity to resolve important issues of law and policy clearly does not constitute a prejudgment of these issues. On the contrary, we require such guidance precisely because that issue has not been resolved.

Nor do we believe that the rejection of the instant settlement unduly prejudices the interests of ultimate consumers in immediate and certain payment of 69% of the amounts attributable to Texas Eastern's gas purchases. For, unless we ultimately resolve the fundamental issues of law and policy presented against Texas Eastern, such potential beneficiaries have no rights to these refunds.

Finally, we perceive no merit to Texas Eastern's contention that our determination to litigate this case in order to establish a general precedent is inconsistent with our order issued on February 28, 1966, 35 FPC 282, denying Tennessee Gas Transmission Company's petition to intervene and permitting it to participate only as an *amicus curiae.* We permitted Tennessee to appear in that role for the very reason that we recognized that the decision in this proceeding would have impact upon it as a precedent of industry-wide applicability even though the determinations made would govern only the rights of Texas Eastern and its direct and indirect customers.

*The Commission orders:*

That the motions for reconsideration filed by Texas Eastern and Consolidated on January 3 and 4, 1967, respectively, be and they hereby are denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP67-161

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 13, 1967)

On December 8, 1966, United Gas Pipe Line Company (Applicant), filed in Docket No. CP67-161 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation and delivery of natural gas to a direct industrial customer, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate 0.474 mile of 4-inch line together with a positive meter station and appurtenant facilities near Milepost 16.0 of Applicant's 12-inch Bayou Casotte lateral line, in Jackson County, Mississippi for the transportation and delivery of up to 2,500 Mcf of natural gas daily to First Chemical Corporation for fuel in chemical processing.

The estimated fifth year annual and peak day requirements of the proposed service are 894,000 Mcf and 2,500 Mcf, respectively.

The total estimated cost of the proposed facilities is $12,639, which cost will be financed out of current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The proposed construction and operation of facilities and the transportation and delivery of natural gas by Applicant, as hereinbefore described, and as more fully described in this proceeding, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation and delivery of up to 2,500 Mcf per day of natural gas to First Chemical Corporation, in Jackson County, Mississippi, as described herein and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The certificate issued shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring additional gas to meet any future increases in their requirements.

(D) The facilities authorized shall be constructed and ready for operation within three months of the date of this order as required by Section 157.20(b) of the Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP65-102; ATLANTIC SEABOARD CORPORATION, CP65-122; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CP65-181; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, UNITED NATURAL GAS COMPANY, AND NORTH PENN GAS COMPANY, CP65-182; UNITED FUEL GAS COMPANY, CP65-198

### ORDER DENYING STAY PENDING REHEARING

(Issued February 14, 1967)

In Opinion No. 512, issued on January 24, 1967, 37 FPC 118, we authorized the Transcontinental Gas Pipe Line Corporation (Transco) to supply limited quantities of gas to both the Washington Gas Light Company (Washington) and the Commonwealth Natural Gas Company (Commonwealth), distribution companies serving, respectively, the District of Columbia and parts of Virginia. The quantities to be supplied by Transco are needed by the distribution companies to serve their growing loads. Previously, the total requirements of both Washington and Commonwealth had been supplied by the Atlantic Seaboard Corporation (Seaboard), which company also filed an application seeking authorization to serve the additional load.

On January 27, 1967, Seaboard filed a motion requesting that we stay the effectiveness of our authorization pending rehearing and on February 3, 1967, the company filed a supporting memorandum. As of this date a petition for rehearing has not been filed. Our decision on this motion would be no different if such a petition had been filed, for the Natural Gas Act does not provide for automatic stays pending rehearing. Oppositions to Seaboard's motion have been filed by Washington, Commonwealth, and Transco.

It is settled that in order to establish a case for a grant of extraordinary relief in the nature of a stay the applicant has the burden of establishing that absent the grant of such relief it would be irreparably injured. *Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 259 F. 2d 921, 925 (CADC). Seaboard has made no such showing. At best it can claim a nominal loss of revenues if our initial decision either is reversed or substantially modified on rehearing and a stay is not granted during the interim period. But as *Virginia Petroleum* makes clear (259 F. 2d at 925): "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough."

*The Commission finds:*

Atlantic Seaboard Corporation has not demonstrated that absent a stay of our order dated January 24, 1967, it will be irreparably injured.

*The Commission orders:*

The motion filed on January 27, 1967, by the Atlantic Seaboard Corporation requesting a stay of our order dated January 24, 1967, pending rehearing, is denied.

**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## VILLAGE OF JEFFERSONVILLE, ILLINOIS AND TRUNKLINE GAS COMPANY, DOCKET NO. CP67–151

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued February 14, 1967)

On November 28, 1966, the Village of Jeffersonville, Illinois (Applicant) filed in Docket No. CP67–151 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Respondent) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell natural gas to Applicant for resale and distribution in Jeffersonville, and environs, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate 7.7 miles of 2-inch pipeline from the proposed connection with Respondent's main transmission line to Jeffersonville in Wayne County, Illinois. Applicant will also construct and operate the necessary distribution facilities to provide the proposed service.

Applicant's estimated peak day and annual requirements are:

| Year | Mcf | |
|---|---|---|
| | Peak day | Annual |
| 1 | 240 | 21,450 |
| 2 | 255 | 23,440 |
| 3 | 275 | 25,350 |

The total estimated cost of the proposed project is $125,000, which cost will be financed by the issuance of revenue bonds.

On December 30, 1966, Respondent filed an answer to the subject application stating that it had no objection to rendering the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 14, 1966 (31 F.R. 15771). No protest or petition to intervene has been filed in this proceeding.

*The Commission finds:*

(1) Respondent, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) Applicant, the Village of Jeffersonville, Illinois, is a municipality existing under the laws of the State of Illinois and is legally empowered to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell natural gas to Applicant under a service agreement to be executed by Applicant and Respondent, in accordance with the Commission's Regulations, and to deliver up to 275 Mcf of natural gas per day for distribution and resale as hereinbefore described.

(4) The requirement that Respondent serve Applicant as hereinafter ordered will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in Jeffersonville, and environs, within one year from the date of issuance of this order.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell up to 275 Mcf of natural gas daily to Applicant and to deliver said gas under a service agreement to be executed by Applicant with Respondent, in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate FPC Gas Rate Schedule, and, further, in accordance with the Commission's Regulations, Respondent shall file with the Commission the executed service agreement to be entered into between Respondent and Applicant.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP67-171

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 14, 1967)

On December 15, 1966, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP67-171 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the increased delivery and sale for resale of natural gas to one of its utility customers, all as more fully set forth in the application.

Applicant, acting upon request of the City of Pinckneyville, Illinois, (Pinckneyville), seeks to increase the Maximum Daily Quantity of natural gas delivered and sold to Pinckneyville from 2,000 Mcf to 2,170 Mcf daily in order that Pinckneyville may meet its increased firm service demands for the 1966-1967 winter heating season.

No new additional facilities are needed to effectuate the proposed increase.

Applicant filed on January 13, 1967, a related service agreement reflecting the subject proposal with a request for waiver of the notice requirements of Section 154.22 of the Commission Regulations so that the filing would be effective the date of the order. Applicant requested waiver so that the delivery of the increased quantities of gas to Pinckneyville could be made as soon as possible.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G–9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) Good cause has been shown for the waiver of the notice provisions of Section 154.22 of the Commission's Regulations so as to permit the related service agreement filed with the Commission on January 13, 1967, to become effective on the date of issuance of this order.

(7) It is appropriate in the administration of the Natural Gas Act and in the public interest to accept for filing the service agreement between Applicant and the City of Pinckneyville, Illinois, filed with the Commission on January 13, 1967, to become effective on the date of issuance of this order.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, authorizing the sale and delivery of up to 2,170 Mcf of natural gas daily as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The provisions of Section 154.22 of the Commission's Regulations relating to notice are waived insofar as they relate to the filing of Applicant's service agreement with the City of Pinckneyville filed with the Commission on January 13, 1967.

(D) Natural Gas Pipeline Company of America's service agreement with the City of Pinckneyville, filed with the Commission on January 13, 1967, is accepted for filing effective on the date of issuance of this order.

Before Commissioners: John A. Carver, Jr., Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. G-16946

### ORDER DENYING MOTION FOR APPROVAL OF SETTLEMENT PROPOSAL

(Issued February 14, 1967)

On November 25, 1966, Pan American Petroleum Corporation (Pan American) filed a motion for approval of a settlement proposal and for issuance of a certificate of public convenience and necessity on a *nunc pro tunc* basis. Pan American recited that it had originally submitted a motion requesting approval of its settlement proposal in this docket together with 14 other certificate applications which were consolidated in the Union Texas Petroleum, *et al.*, proceeding, Docket No. G-13221, *et al.* Objections to the settlement of this docket were received at that time. Although Pan American's proposal with regard to its other certificate applications was approved, no action was taken then on this docket. Subsequently, Pan American was issued a permanent certificate of public convenience and necessity in this docket. *Union Texas Petroleum, et al.*, 32 FPC 254 (1964). Pan American alleges that the matter which was causative of the denial of the original settlement proposal in this docket has been disposed of and there is now no reason why a settlement should not be permitted, in view of the fact that it otherwise would have been permitted at the time of the original proposal.

On December 27, 1966, the Public Service Commission of the State of New York (New York) filed a letter in opposition to Pan American's proposal. New York alleged that the preexisting bar to approval of the settlement, in fact, has not been removed and that, since a final determination has been made by the Commission, there is no reason why Pan American should not reduce its rate to the level provided in the *Union Texas Petroleum* decision.

In prior cases arising out of the *Union Texas Petroleum* proceeding the Commission has denied settlement proposals where there is, in fact, no settlement between the parties. See *Union Texas Petroleum, et al., Sun Oil Company*, CI60-75, order issued December 23, 1963 [unreported]; *Continental Oil Company*, 30 FPC 1551; *Freeport Oil Co.*, Docket No. CI61-144, order issued September 10, 1964 [unreported]. In the latter case the Commission specifically found: "Since interested parties object to the settlement proposals filed by Freeport, there is in fact no settlement of the matters * * * " The Commission further found that Opinion No. 436, 32 FPC 254, issued July 23, 1964, decided the proceedings on the merits.

We see no reason to reach a different conclusion at this time. Accordingly, we shall deny the motion.

*The Commission orders:*

The Motion For Approval of Settlement filed by Pan American Petroleum Corporation on November 25, 1966, is denied.

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## OPINION NO. 510-A

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-50

### OPINION AND ORDER AMENDING PRIOR ORDER

(Issued February 14, 1967)

*Syllabus*

1. Commission *rejects* argument that instant proceeding was used as vehicle to promulgate new policy prohibiting interstate pipeline companies from selling

**natural gas to industrial customers if any distributor expressed a competitive interest. P. 315.**

**2. Upon rehearing, Commission *modifies* prior opinion and order to provide for certain limitations on volumes of gas pipeline is required to deliver to distributor-customer and in all other respects *denies* applications for rehearing.**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

CARVER, *Commissioner:*

On December 23, 1966, 36 FPC 1107, the Commission issued its Opinion No. 510 and order in this proceeding. By that order, a certificate of public convenience and necessity was issued to Panhandle Eastern Pipe Line Company (Panhandle) for the construction of certain facilities involved in looping its existing Fulton lateral for a distance of approximately 14.1 miles. The order further provided that Panhandle should signify its acceptance of the certificate within thirty (30) days of the date of the order or the certificate should no longer be valid. In the event Panhandle did not accept the tendered certificate the order provided that the proceeding should be remanded for further hearing to develop a more complete record upon certain issues. On January 23, 1967, Panhandle filed an application for rehearing of Opinion No. 510 and its accompanying order. On the same day H. K. Porter Company, Inc. (Porter) filed an application for rehearing adopting the Panhandle application.

The relevant facts are set forth in Opinion No. 510 and need not be repeated here. The basic question was whether a certificate should issue to Panhandle to construct the necessary facilities and deliver gas to Porter, an industrial plant located on the outskirts of the City of Fulton, Missouri, or whether Porter should be served by Fulton, which is a municipal distributor. Subsidiary questions, based upon a determination that Porter should be served by Fulton, are who should construct the necessary facilities, exactly what facilities should be constructed, and who should bear the cost.

In its application for rehearing, Panhandle argues that the Commission should not use the present proceeding as a vehicle "to promulgate a new policy which prohibits interstate pipeline companies from selling natural gas to industrial customers if any distributor * * * expresses a competitive interest * * *." The short answer is that we have not done so. Commission precedent lays behind the "policy", and each case stands on its own facts.

Panhandle's complaint about the inadequacy and tardiness of the case presented by Fulton was previously considered. Proceedings before this Commission are not so strictly adversary as Panhandle argues. This Commission is charged with protection of the public interest, a responsibility transcending the passive role to which Panhandle would limit us. Panhandle, if it declines the certificate, will have, with Fulton, an opportunity for a fuller development of the facts, wherein it may be that Panhandle will be issued a certificate.

Panhandle argues that to certificate Fulton in this proceeding would allow unregulated sales to be made to Porter. We have not ordered a certificate be issued to Fulton, and Panhandle's arguments to this effect can be heard upon the remand which will follow if Panhandle declines the certificate proffered in Opinion No. 510.

The argument that the service now rendered to Harbison-Walker will be impaired by the Commission's order requiring Panhandle to make delivery of gas to Fulton on an interruptible basis in excess of Fulton's present contract demand presents no new matter. Whether Harbison-Walker is entitled to the gas at its present level of consumption still remains an open question. We did not and do not decide whether Harbison-Walker is legally entitled only to the amounts consumed by it at the time regulation by this Commission over natural gas pipelines became effective, nor do we know what that level of consumption was.

Panhandle questions a number of the factual statements in Opinion No. 510. None of the statements of fact made in Opinion No. 510 is to be considered binding upon either the Presiding Examiner or upon the Commission in making a final determination of this matter. Ultimate conclusions as to the facts will depend upon what additional evidence may be introduced upon further hearing.

No issue has been previously raised or argued as to whether Fulton may properly utilize gas purchased under its present contract for its municipal power plant and we express no opinion upon that question.

Panhandle contends that the Commission erred in ordering Panhandle to supply 2500 Mcf of interruptible gas to Fulton until October 1, 1968, and 3000 Mcf per day thereafter, while finding that Porter's peak day requirements are 2127 Mcf until October 1, 1968, and 2451 Mcf thereafter. Panhandle further contends that the Commission should have reduced the volume of interruptible gas to be thus made available by the unused portion of Fulton's present contract demand as reflected by the record for various months in the year. Panhandle argues that the Commission should have limited its order to the volume of gas which Porter actually consumes while this order is in effect.

We are not willing to limit our order to the peak day requirements of Porter as found in Opinion No. 510. Estimates for the future are necessarily approximate. It may well be that Porter's actual requirements will be in excess of these estimates, although we can make no finding that this will in fact occur. There will likely be some gas lost and the order must provide for a sufficient quantity in excess of Porter's actual requirements to allow for such loss. Therefore, we will not reduce the volumes of interruptible gas by the unused portion of Fulton's present contract demand on the basis of past usage. Contract demand gas is gas to which Fulton is entitled quite independently of service to Porter.

There is merit to Panhandle's contention that Panhandle's obligation to deliver interruptible gas should be limited to the volume actually consumed by Porter while this order is in effect, although we believe this limitation should be modified by including a supply factor of 10% to reflect possible losses by Fulton in transporting the gas to Porter. Accordingly, our prior order accompanying Opinion No. 510 will be modified to provide that in no event shall Panhandle be required to sell gas to Fulton under its interruptible Rate Schedule I–2 on any given day in excess of 110 percent of the amount consumed by Porter on that day.

It is not intended, of course, that Panhandle shall actually determine on a given day the amount of gas to be consumed by Porter on that day and adjust its deliveries to Fulton accordingly on that same day. Under paragraph 6 of Panhandle's Rate Schedule I–2, it is provided that interruptible gas shall be the volume of gas delivered in excess of the volumes Panhandle is obligated to deliver under other rate schedules. Whatever amount Fulton takes on a given day then, will be billed in accordance with its contract for firm gas until the contract demand for that day has been used; any additional gas not in excess of 110 per cent of Porter's actual use on that day or up to the daily amount provided by the order accompanying Opinion No. 510 (whichever amount is less) shall be billed at the interruptible rate, and any amount in excess thereof shall be billed as unauthorized takes in excess of contract demand as provided in paragraph 6 of Panhandle's Rate Schedule G–2. In this way, the responsibility for guarding against Fulton utilizing our temporary authorization to secure additional gas for other purposes than sales to Porter is with Fulton, which may be charged a penalty rate if too much gas is taken. It will be necessary that a recording meter be installed within a reasonable time to measure Porter's daily take, if the installation has not already taken place.

Panhandle has not signified its acceptance of the certificate tendered to it pursuant to Opinion No. 510. The order accompanying that opinion provided the certificate would be invalid if not accepted within 30 days. In view of the application for rehearing however, we believe that the time within which Panhandle may accept such certificate should be extended until 20 days from the date of this order.

*The Commission finds:*

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by Panhandle Eastern Pipe Line

Company and H. K. Porter Company, Inc. in this proceeding present no facts or legal principle which would warrant any change or modification of the Commission's Opinion No. 510 and its accompanying order except as specified below.

*The Commission orders:*

(A) Ordering paragraph (D) of the order accompanying Opinion No. 510 is hereby amended by the addition of the following: "In no event, however, commencing 20 days from the date of this order, shall Panhandle Eastern Pipe Line Company be required to sell natural gas to the City of Fulton under its interruptible rate schedule I-2 on any given day in excess of 110 percent of the amount of gas sold and delivered by the City of Fulton to H. K. Porter Co., Inc., on that day. The requirement that Panhandle Eastern Pipe Line Company sell and deliver interruptible gas to the City of Fulton is further conditioned upon the installation not later than March 6, 1967, by or at the expense of the City of Fulton of such equipment as is necessary to record the deliveries of gas by the City of Fulton to H. K. Porter Company, Inc., on a daily basis, if such equipment has not already been installed."

(B) Paragraph B of the order accompanying Opinion No. 510 shall be amended to read as follows: Panhandle Eastern Pipe Line Company shall signify its acceptance of the certificate issued pursuant to Paragraph (A) of the Order accompanying Opinion No. 510 not later than March 6, 1967, or if it fails to do so such certificate shall no longer be valid.

(C) Paragraphs (F) and (G) of the order accompanying Opinion No. 510 are amended by substituting "February 28" for "February 14" in said paragraph (F), and "April 4" for "March 15" in said paragraph (G).

(D) Except as herein granted, the petitions for rehearing of Panhandle Eastern Pipe Line Company and H. K. Porter Company, Inc., are denied.

Commissioner O'Connor *not participating.*

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP67-186

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 15, 1967)

On December 27, 1966, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP67-186 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to render interruptible natural gas service to the Two Rivers Company for use in its grain dehydration plant, Miller County, Arkansas, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate approximately 10,500 feet of 3.5-inch O.D. sales lateral pipeline and appurtenant facilities extending southeasterly from Applicant's 16-inch Line A to the Two Rivers Company plant.

The estimated maximum day and annual natural gas requirements in the third year of proposed operations are 1,000 and 175,000 Mcf, respectively.

The total estimated cost of Applicant's proposed facilities is $22,100. In accordance with a precedent agreement dated November 25, 1966, the Two Rivers Company will pay to Applicant an amount equal to the estimated cost of construction before construction begins and Applicant will reimburse Two Rivers Company by crediting its monthly bills at the rate of 3.2 cents per Mcf.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on February 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Arkansas Louisiana Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the gen-

**eral terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.**

**(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.**

**(D) The certificate issued hereby is granted on the express condition that the interruptible gas service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP67-177

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

**(Issued February 15, 1967)**

**On December 20, 1966, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP67-177 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to maintain its present mainline system capacity and continuity of service, all as more fully set forth in the application.**

**Specifically, Applicant seeks authorization to construct and operate a 4,000 horsepower reciprocating type compressor unit and appurtenant equipment at its Compressor Station No. 155, Davidson County, North Carolina.**

**The proposed facilities will provide compression at Station No. 155 sufficient to maintain present system capacity with approximately 2,440 additional horsepower for future system expansion or emergency use.**

**The total estimated cost of Applicant's proposed facilities is $1,734,848, which cost will be financed from cash on hand or short term bank loans.**

**After due notice, no protest, petition to intervene or notice of intervention has been filed herein.**

**At a hearing held on February 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,**

***The Commission finds:***

**(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 28, 1950, in Docket No. G-1277 (9 FPC 32).**

**(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commis-**

sion, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by June 1, 1967.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP67–200

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 15, 1967)

On January 12, 1967, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP67–200 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and delivery of an additional 300 Mcf of natural gas per day to the Pennsylvania Gas Management Company (PGM), an existing resale customer, all as more fully set forth in the application.

By letter dated December 20, 1966, PGM requested that Applicant deliver an additional 300 Mcf of natural gas per day in order for PGM to meet the requirements of one of its firm customers, the New Jersey Zinc Company. Accordingly, Applicant filed the instant application requesting authorization to deliver said additional volume of natural gas under its Rate Schedule CD–3. The proposed sale will be made from Applicant's unallocated system capacity through existing facilities.

In accordance with its Rate Schedule CD-3 Applicant is presently authorized to sell and deliver to PGM up to 11,200 Mcf of natural gas per day.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on February 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 28, 1950, in Docket No. G-1277 (9 FPC 32).

(2) The proposed sale of increased volumes of natural gas hereinbefore described, as more fully described in the application in this proceeding, is to be a sale for resale in interstate commerce subject to the jurisdiction of the Commission and is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of increased volumes of natural gas, as proposed in the instant application, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of said Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing Applicant to increase its sales to Pennsylvania Gas Management Company by 300 Mcf per day to a total of 11,500 Mcf per day, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Regulations.

(C) The sale of increased volumes of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within ninety days of the date hereof.

(D) Applicant shall file with the Commission an appropriate revised service agreement with Pennsylvania Gas Management Company in accordance with the provisions of the Commission's Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP67-147

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 15, 1967)

On November 22, 1966, United Gas Pipe Line Company (Applicant) filed in Docket No. CP67-147 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation and sale of natural gas in interstate commerce for resale, all as more fully set forth in the application.

Applicant proposes to construct and operate 30 feet of 2-inch pipeline, together with a positive meter station and appurtenant facilities, near Milepost 25.1 on Applicant's 8-inch pipeline to Container Corporation of America, Escambia County, Florida. These facilities will be used for the sale and delivery of up to 475 Mcf of natural gas daily to the Town of South Flomaton, Escambia County, Florida, for resale and distribution by means of the proposed distribution system of said town.

The total estimated cost of Applicant's proposed facilities is $7,448 which cost will be financed out of current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The proposed construction and operation of facilities and the sale and delivery of natural gas by Applicant to the Town of South Flomaton, Florida, as hereinbefore described, and as more fully described in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a),

(b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale and delivery of up to 475 Mcf per day of natural gas to the Town of South Flomaton, Florida, as described herein and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) Applicant and the Town of South Flomaton shall execute a service agreement in accordance with the Commission's Regulations reflecting the new delivery point and volumes and the same shall be filed with the Commission by Applicant.

(D) The facilities authorized shall be constructed and placed in actual operation within one year of the date of this order as required by Section 157.20(b) of the Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2 AND AMERADA PETROLEUM CORPORATION, ET AL., DOCKET NO. RI60-18, ET AL.

### ORDER DENYING MOTIONS FOR EXTENSION OF TIME FOR FILING BRIEFS ON EXCEPTIONS

(Issued February 16, 1967)

By order issued January 6, 1967, 37 FPC 66, the Commission set February 28, 1967, as the final date for filing exceptions to the initial decision in the captioned proceeding. The order also extended the time for filing briefs in opposition to exceptions to April 10, 1967. On January 20, 1967, 37 FPC 116, we issued a further order denying several motions for reconsideration of the foregoing time limitations.

On February 2 and 3, 1967, further motions were filed by certain of the respondent producers[1] renewing their previous motions and requesting that the time for filing exceptions to the initial decision be extended to a date not less than 90 days from the time when judicial review of Opinion Nos. 468 and 468-A, 34 FPC 159, 1068, is completed and a final order of the Commission has been issued in the *Permian* proceeding, Docket No. AR61-1, *et al.* Movants note that the findings and conclusions in the initial decision are based in the main on our Opinion Nos. 468 and 468-A; that, on January 20, 1967, the Court of Appeals for the Tenth Circuit handed down its opinion on review remanding those cases to the Commission; and that "such action by the Court of Appeals makes it clear that at this juncture the public interest would not be served by requiring movants and the other parties to proceed with the filing of exceptions to the initial decision".

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[1] E. Cockrell, Jr.; Freeport Oil Company; Bradco Properties, Inc; and jointly by John W. Mecom and U.S. Oil of Louisiana Inc.

The *Permian* case was ordered remanded because of certain deficiencies found by the court in the evidence and with our opinions. It has not been shown at this point that any or all of these asserted evidentiary failings are present in the *Southern Louisiana* record or that the claimed decisional shortcomings are incapable of resolution in this proceeding. On February 1, 1967, we announced our intention to request the Solicitor General to petition the Supreme Court for a writ of certiorari.

The instant case will be decided on its own facts as developed in the record in this proceeding. No reason has been alleged, and none is apparent, why the Commission cannot proceed with its decision and take action on the law as it exists now or as it may exist at the time we are prepared to render our opinion.

No sufficient reason has been advanced why this proceeding must necessarily await the final judicial resolution of the *Permian* decision. To the contrary, the fact that a number of the cases consolidated in this proceeding are under Section 5(a) of the Natural Gas Act, where a price reduction, if any, could be effective only prospectively, militates against any undue delay in our decision. Accordingly, the motions will be denied.

*The Commission orders:*

The motions filed February 2 and 3, 1967, by E. Cockrell, Jr., Freeport Oil Company, Bradco Properties, Inc., and jointly by John W. Mecom and U.S. Oil of Louisiana, Inc., for extension of the time for filing exceptions to the initial decision in this proceeding are denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## GULF OIL CORPORATION (SUCCESSOR TO THE BRITISH-AMERICAN OIL PRODUCING COMPANY), DOCKET NO. G-10615, ET AL.[1]

### ORDER AMENDING ORDER

(Issued February 16, 1967)

On December 28, 1966, 36 FPC 1134, the Commission issued an order approving a company-wide settlement proposal filed by The British-American Oil Producing Company (British-American), which has been succeeded by the Gulf Oil Corporation (Gulf). Ordering Paragraphs (E), (F) and (G) of said order directed British-American to retain the refund monies it was ordered to pay to its jurisdictional natural gas pipeline customers, and gave it the option of either commingling such monies or placing them in an escrow account.

On February 1, 1967, Gulf advised the Commission by letter that it will make the refunds ordered by the Commission. However, it stated that in computing the refunds due each of its pipeline purchasers it believed that the monies due and owing four of them to be *de minimis*, in accordance with previous Commission orders. Consequently, it requests permission to refund to each of the four companies the respective amounts due to each. The refund to Mississippi River Transmission Corporation, Panhandle Eastern Pipe Line Company, Cities Service Gas Company and Colorado Interstate Gas Company amount in each case to less than $1,000 on an annual basis, and we find that such amounts are *de minimis*.

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[1] The additional dockets involved herein are set forth in the Appendices to the order issued herein on December 28, 1966.

**Therefore, we shall amend the order of December 28, 1966 to provide for immediate payment of these refunds.**

***The Commission orders:***

**(A) Ordering Paragraph (E) of the order issued December 28, 1966, is amended to require Gulf to refund the monies due and owing to each of the aforenamed pipeline purchasers.**

**(B) Within fifteen days from the issuance of this order Gulf shall file with the Commission an agreement, in writing, from each of said companies, with its computation of principal and interest due and owing each.**

**(C) Fifteen days after such agreements are filed with the Commission, Gulf shall refund the monies due and owing to each of the aforementioned four pipeline purchasers, and ten days thereafter shall file with the Commission a letter from each acknowledging receipt of such monies.**

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TOTAL GAS SUPPLY OF NATURAL GAS PIPELINE COMPANIES—ANNUAL REPORT FPC FORM NO. 15, DOCKET NO. R–308

## ORDER NO. 337

### MODIFYING FORM NO. 15 AND PRESCRIBING FORM NO. 15-A

**(Issued February 16, 1967)***

**By Notice of Proposed Rulemaking issued herein on September 22, 1966 (31 F.R. 12729, Sept. 29, 1966) the Commission proposed (1) to revise Form 15, Annual Report of Gas Supply; (2) to allow companies with comparatively small volumes of reserves to file only an abbreviated report to be called Form 15-A; and (3) to require the submission of Form 15 information in printed form and in appropriate automatic data processing media. The comments filed and a conference of our staff with interested parties reveal problems in the proposed overall revision of Form No. 15 and immediate use of ADP media which will require additional time to resolve. Accordingly, this order is confined to prescribing the new abbreviated Form No. 15-A and making a minor revision in Form No. 15. In all other respects this proceeding will be continued for further consideration of the other revisions to Form No. 15 proposed in the notice and such additional notice as may be appropriate.**

**These conclusions result from our consideration of the 18 responses[1] of the invitation in the notice and the results of a conference held on January 6, 1967, pursuant to paragraph 9. of the notice herein.**

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***Published in the Federal Register on February 25, 1967 (32 F.R. 3292).**

**[1] Consolidated Gas Supply Corporation; El Paso Natural Gas Company; Florida Gas Transmission Company; Independent Natural Gas Association of America (INGAA); Natural Gas Pipeline Company of America; Northern Natural Gas Company; Panhandle Eastern Pipe Line Company; Philadelphia Electric Company; Public Service Electric and Gas Company; Southern California Gas Company; Southern Counties Gas Company of California; Pacific Lighting Service and Supply Company; Southern Natural Gas Company; Tennessee Gas Pipeline Company; Texas Eastern Transmission Corporation; Texas Gas Transmission Corporation; Transcontinental Gas Pipe Line Corporation; United Gas Pipe Line Company; Valley Gas Transmission, Inc.; Western Gas Service Company.**

As was pointed out in paragraph 2 of that notice, Form No. 15 was originally promulgated by Order No. 279, issued March 31, 1964 (31 FPC 750, 29 F.R. 4873) which also anticipated a "Second Phase" of the report, the possible exemption of, or an abbreviated report form for, companies having comparatively small volumes of reserves and the eventual use of ADP media to the extent feasible. It has become apparent, however, both from the comments filed herein and the conference held on January 6, 1967, that additional time is necessary for further conferences with industry representatives and our staff's consideration of the revisions or additions to the form which will be necessary and their relationship to the Second Phase and the use of ADP media even for the First Phase. We recognize that the changeover poses problems for all concerned and are persuaded that further conferences are not only desirable but necessary.

A minor clarifying change in Schedule No. 1 of Form No. 15 was proposed in the notice herein and we are adopting it in substance by adding a footnote to the schedule. In view of the action we are taking herein, the present text of paragraph (a) of § 260.7, though accurate, is now outdated so it is being revised to read as set out below. Form No. 15, as here revised, continues as the first-phase report referred to in the original text of paragraph (a).

No objections were directed to the new Form No. 15-A, but we are making one addition to the content of the form proposed in the notice. A new line 22 is being added to Schedule 3 to require the respondent to give the number of future years that its annual requirements can be met from the total system gas supply figure shown elsewhere on the form. Similar information can be derived from the data now furnished on Form No. 15 and is here necessary in order that such data will be furnished, as well, by the companies which do not file Form No. 15.

*The Commission finds* that in view of the foregoing and upon consideration of all relevant matters presented, including the arguments, contentions, suggestions and other views presented in the comments received and during the course of the conference held on 6 January 1967, it is necessary and appropriate in the administration of the Natural Gas Act that the use of Form No. 15, as modified herein, be continued for the reporting year 1966; that Form No. 15-A be prescribed for the reporting year 1966 and thereafter; and that in all other respects the proceeding herein be continued.

*The Commission,* acting under the authority of the Natural Gas Act, as amended, particularly sections 7, 10(a), 14(a) and 16 thereof (52 Stat. 825, 826, 828, 830; 56 stat. 83; 15 U.S.C. 717f, 717i(a), 717m(a), 717o), *orders:*

(A) Effective upon the issuance of this order, Part 260, Chapter I, Title 18 of the Code of Federal Regulations, is amended as follows:

1. In § 260.7, paragraphs (a) and (b) are revised to read as follows:

§ 260.7 Form No. 15, Annual report of gas supply for certain natural gas companies.

(a) A revised form of Annual Report of Total Gas Supply, designated FPC Form No. 15, is prescribed for the reporting year 1966 and thereafter to be used by natural gas companies as provided by and in accordance with paragraph (b) of this section.

(b) Each natural gas company, as defined by the Natural Gas Act, as amended (52 Stat. 821), except (1) a company whose gas reserves, owned or controlled by producer contracts, at the end of any report-year are less than 50 billion cubic feet of gas, or (2) a company purchasing its entire supply of natural gas from other companies subject to the provisions of this section and/or foreign suppliers, or (3) a company which acts only as a transporter of gas for others, shall prepare and file with the Commission for the calendar year ending December 31, 1966, on or before May 1, 1967, and for subsequent years on or before each May 1, thereafter, an original and four conformed copies of FPC Form No. 15. Companies described in clauses (1) and (2) in the preceding sentence shall file FPC Form No. 15-A, prescribed by § 260.7a. A transporter of gas similarly exempt from this paragraph by clause (3), above, shall file, in lieu of the report, a statement giving the name(s) and address(es) of the company or companies for which it is transporting the gas. One copy of the report should be retained in its files. The conformed copies may be carbon or reproduced by any means that provide clearly and accurately aligned impressions.

2. A new § 260.7a is added, as follows:

§ 260.7a Form No. 15-A. Annual report of gas supply for certain natural gas companies exempt from the requirements of paragraph (b) of § 260.7.[1]

(a) An Annual Report of Total Gas Supply, designated FPC Form No. 15-A, is prescribed for natural gas companies otherwise subject to the provisions of § 260.7 but excepted from the requirements of paragraph (b) by virtue of clauses (2) and (3) thereof.

(b) Each natural gas company, subject to the provisions of § 260.7, whose natural gas reserves at the end of any report-year are less than 50 billion cubic feet of gas, or which purchases its entire supply of natural gas from other companies subject to the provisions of § 260.7 and/or foreign suppliers, shall file an original and four conformed copies of FPC Form No. 15-A at the times prescribed in § 260.7(b).

[Secs. 7, 10, 14, 16, 52 Stat. 825, 826, 828, 830; 56 Stat. 83; 15 U.S.C. 717f, 717i, 717m, 717o]

(B) FPC Form No. 15, heretofore prescribed by the said § 260.7, is amended, effective for the reporting year 1966 and thereafter, by adding the following footnote to Schedule No. 1:

*Footnote to Schedule No. 1:*

On Line 28 enter the percents of the volume shown on Line 4, Purchased and/or Produced, under Columns 56 through 64, Total Pipeline System for each of the following:

1. Firm Gas Sales: Those sales made under schedules or contracts which anticipate no interruption.

2. Interruptible Gas Sales: Those sales made under schedules or contracts which provide for curtailment by the seller in order to protect service to firm customers.

3. Other Use Gas: That volume of gas classified as "Company Use and Unaccounted for Gas".

(C) FPC Form No. 15-A, set out in the attachment hereto,* is prescribed, effective for the reporting year 1966 and thereafter, for use in accordance with §§ 260.7 and 260.7a as revised and added, respectively, by ordering paragraph (A) hereof.

(D) In all other respects this proceeding is continued for such further conferences, notices and orders as may be appropriate.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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[1] As used herein, "natural gas company" does not include "independent producers," as defined in § 154.91(a) of this chapter.

*Omitted in printing.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

### ORDER REAPPROVING REVISED LICENSE EXHIBIT L DRAWINGS FOR PROJECT

(Issued February 16, 1967)

On July 13 and November 1, 1966, respectively, Pacific Power & Light Company, licensee for constructed Project No. 2082, filed letters requesting that the appropriate license Exhibit L drawings for the project be revised to show certain alterations made to the Iron Gate and John C. Boyle developments, as shown on Exhibit L prints accompanying the letters, and requested Commission reapproval of the license Exhibit L drawings revised in accordance with the prints. The project is located on the Klamath River in California and Oregon.

The Exhibit L print relating to the Iron Gate development shows the installation of an additional air vent on the penstock because of a penstock collapse due to the sudden opening of the Howell-Bunger valve on the turbine by-pass. The installation was completed on June 27, 1966. The Exhibit L print relating to the John C. Boyle development shows remedial work to prevent further erosion and undercutting of the fish ladder wall by adding concrete to the footing of the wall. Our staff on-the-site inspection confirms that the changes were appropriate and were made substantially as shown on the Exhibit L prints.

*The Commission finds:*

License Exhibit L–4, Sheet No. 1 (FPC No. 2082–56) approved September 15, 1959, and license Exhibit L–14, Sheets Nos. 1 and 2 (FPC Nos. 2082–149 and –150) approved November 21, 1962—revised by Commission staff to reflect the changes shown on the aforementioned Exhibit L prints filed July 13 and November 1, 1966, respectively—conform to the Commission's rules and regulations and should be reapproved as part of the license for the project.

*The Commission orders:*

The license Exhibit L drawings designated in the above finding, revised for the purpose stated in the finding, are hereby reapproved as part of the license for Project No. 2082.

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## OPINION NO. 514

## ROCKY MOUNTAIN POWER COMPANY, PROJECT NO. 2289

### OPINION AND ORDER GRANTING MOTION TO DISMISS APPLICATION FOR LICENSE

(Issued February 16, 1967)*

*Syllabus*

1. State agency [charged with looking into supply needs in proposed project market area] has standing and is permitted to intervene under Section 1.8(d) of the Rules, allowing late filings. P. 331.
2. Commission does not require firm contracts before licensing hydroelectric projects if other evidence sufficiently shows ability to finance project as well as marketability of power. P. 334.

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*See order issued April 13, 1967 granting reconsideration and rehearing. Rehearing denied, 37 FPC 900. Affirmed, *Rocky Mountain Power Co. v. F.P.C.*, 409 F. 2d 1122 [CADC–1969].

**3. Section 7(c) of Administrative Procedure Act provides that a proponent of a rule or order has burden of proof; this has been applied in numerous instances where applicant for license or other privilege has failed to make out a case. P. 334.**

**4. Where applicant has not made sufficient showing either of financial feasibility or of a market for the power, motion to dismiss application should be granted P. 336.**

**5. Commission *dismisses* application for license in a proceeding initiated under Section 4 of the Federal Power Act.**

**Commissioner Ross *dissenting***

***Charles F. Brannan* and *Smith W. Brookhart* for Rocky Mountain Power Company**

***Robert L. McCarty* and *Kenneth Balcomb* for Colorado River Water Conservation District**

***Sidney G. Baucom* and *John R. Barry* for Utah Power & Light Company and Western Colorado Power Company**

***Donald D. Cawelti* for Public Service Company of Colorado**

***Carl Illig, William S. Livingston, Bernard A. Foster, Jr., James D. McKinney, Jr.,* and *Northcutt Ely* for Humble Oil & Refining Company**

***Donald H. Henderson* for Colorado Game, Fish and Parks Commission**

***Willard T. Johns* for Colorado Wildlife Federation**

***Robert Lee Kessler* for Public Utilities Commission of the State of Colorado**

***Donald A. Sander* for the Staff of the Federal Power Commission**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

O'CONNOR, *Commissioner:*

Rocky Mountain Power Company filed an application for license for a hydroelectric project on January 5, 1961. As supplemented, amended and revised, the application now embraces a pump storage development with an estimated total ultimate capacity of over two million kilowatts. Power for off-peak pumping will be provided by steam generation operated by an affiliated company. Both project and steam generating plant would be located in Colorado; power would be transmitted to Nebraska and neighboring states by a third affiliated corporation.

On February 2, 1961, the Commission notified applicant that it had not made a sufficient showing of a market for the power and of applicant's ability to finance the project and requested that such information be supplied. Commission letters dated March 17, 1961, March 30, 1962, March 20, 1963, July 29, 1963, March 19, 1964 and June 23, 1964, reiterated the request for satisfactory information. In the August 19, 1965, Order Fixing Hearing, 34 FPC 539, the Commission stated that, "the application is still insufficient regarding information as to financing of the project and as to information on availability of markets for electric power * * * " Paragraph (B) (2) of the order provided "the applicant's filing [of its case on hearing] shall include a full and complete statement of a definite plan for the financing of the project and a full and complete statement of definite plans for the marketing of the electric power * * * Failure to comply with this directive will constitute a basis for a motion to dismiss the application for lack of completeness."

After the applicant presented its case, intervener Public Service Company of Colorado and the Commission staff moved to dismiss the application on the ground that applicant had failed to produce any definite plan for financing the project or marketing its power as required by the Commission order. The motion to dismiss was joined in by the Public Utilities Commission of Colorado, the Colorado Game, Fish and Parks Commission, the Colorado Wildlife Federation, Colorado River Conservation District, Western Colorado Power Company and the Utah Power & Light Company. On June 20, 1966, the Presiding Examiner referred to the Commission the motion to dismiss the application. Oral argument on the motion has been requested by the applicant.

On November 24, 1966, after the time provided by Section 1.8(d) of the Commission's Rules of Practice and Procedure, the Nebraska Power Review Board filed a Notice of Intervention. The Board did not request that the hearing be reopened so that it might submit evidence, nor did it request that the course of the proceedings be altered in any manner because of its intervention. It asked only that it be allowed "to participate fully in any further proceedings". On December 13, 1966, the Colorado River Water Conservation District filed a pleading in opposition to the Board's Notice of Intervention.

Section 1.8(d) of the Commission's Rules of Practice and Procedure permits late filings "in extraordinary circumstances for good cause shown". Whether the Board's filing be considered a Notice of Intervention or simply a Petition to Intervene, it is obvious that it has an interest in this proceeding. Although the Board does not have general rate jurisdiction,[1] it is charged with looking into the present and prospective needs of supply in which a large part of the proposed project's power would be marketed. Moreover, its Chairman has been a witness in this proceeding. We see no reason, therefore, to deny it standing and will permit the intervention.

The only question for the Commission to decide is whether applicant has introduced sufficient evidence of a market for the power and of feasible financing for the project. (Applicant did object to the motion by intervener, Public Service Company of Colorado, on the ground that this intervener did not have standing to make such a motion, but there is no question of the standing of the Commission staff to do so.

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[1] See Section 70-1017 of the Nebraska Revised Statutes. The Board does have limited jurisdiction "* * * if the supplier and the applicant cannot agree to any of the terms under which [electric] service is to be furnished, or if the supplier is not treating all customers and applicants fairly and without discrimination * * *"

*The Market for the Power*

The project is to be part of a power pool which will develop 900 megawatts, peaking, in the first stage (300 from the project), 1300 in the second stage (400 from the project) and 2800 in the third stage (1000 from the project).

The applicant has no firm contracts, and has not shown prospects for any except in Nebraska with Consumers Public Power District (Consumers). A "Memorandum of Intentions" between Consumers, applicant, and applicant's affiliated companies recites Consumers' intention to purchase 100 to 150 megawatts above present requirements in 1970. It does not say the purchase will be from the applicant. It further provides that there is no legal commitment between the parties until they have "negotiated definite contracts".

It does not appear that applicant could furnish power to Consumers by 1970, even assuming it now had a license for the project. Applicant originally hoped to be ready with 300 megawatts of steam generation and 200 megawatts of project power by 1970, with another 300 megawatts of steam generation by 1971 (Exhibits 9, 14). This was dependent, however, on construction being started in 1966. It is doubtful whether construction could be commenced before the spring of 1968 in view of the necessity for completing this proceeding, obtaining the necessary financing, and attending to all the other details which must precede construction. Even this date assumes that the applicant could remedy the deficiencies in his application. Repeated requests that he do this during the last five years have only resulted in pleas for more time. Consumers will have to fill its 1970 deficiency from some other source. This would indicate that even the potential 100-150 megawatts sale to Consumers in 1970 will be lost to applicant.

In Colorado, negotiations for sale of power have been fruitless, and no power will be sold there so far as appears from the record. Elsewhere, aside from Consumers, there is no indication of any interest save one letter from a Nebraska cooperative, saying, "If and when you could develop firm prices for the power and energy we would give consideration to firm purchases". The letter indicates the load deficiency of the cooperative in 1971 as 65,000 kilowatts. (Ex. 100–04a)

This letter, and the Consumers Memorandum of Intentions, is all that applicant's President cited in answer to a question as to whether consumers in the area had evidenced an intention to purchase power from the applicant (Brannan, p. 12). He stated that a press release by the Department of the Interior, dated July 8, 1964, and the Annual

Report of the Nebraska Power Review Board "indicated an urgent demand for additional supplies of power for users in Nebraska" (Brannan, p. 10). He added (p. 11) that power is being offered to users in Kansas and South Dakota, and may be available east of the Missouri. Nothing is said as to the reception given the offers.

There is testimony by an official of Consumers and by the Chairman of the Nebraska Power Review Board that Nebraska utilities will experience power deficiencies in the years ahead. These increase to 1979. They "will have to be met either by purchasing the requirements from [the pool of which applicant is a part] or be met from other sources * * *" (Schaufelberger, p. 5). There are "appreciable deficiencies" in South Dakota, Wyoming and Kansas "which could be met by the power produced by the * * * pool" (Schaufelberger, p. 6).

As the project power would not be available for several years, Nebraska utilities would be compelled to arrange for power from other sources for the near future. The extent to which these new sources will cut into the potential market for the project power in later years is not clearly indicated in this record.

The applicant's presentation has centered principally upon Nebraska. Therefore we feel it incumbent upon us to bear in mind the present and potential needs and supplies of power in Nebraska in disposing of this application. The Commission has been aware of the power situation in Nebraska for some time. The staff's report on the Nebraska Power interruption of July 11, 1966, recomended an upgrading in Nebraska's generating capacity and the strengthening of its interties. The petition of the Nebraska Power Review Board to intervene in this proceeding has served to underscore our concern for the future power supply in Nebraska, and we note that the Nebraska utilities are already planning their load supplies for 1970 and later.[2] However, despite repeated requests, there has been no showing of a market for this power in Nebraska or elsewhere. We believe it would serve no purpose to prolong this proceeding further. Should a market eventually be found for the power the applicant proposes to make available, no action which we are taking today would prevent the filing of a new application supported by new evidence.

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[2] There is now pending before the Review Board an application for construction of a 200 mw coal fired steam-electric generating station at Grand Island and a 345 kv line from Grand Island to the Omaha area. If it is approved, it could be available in time to help carry the 1970 load. Consumers Public Power District and Iowa Power and Light Company have under consideration the construction of a 400 to 800 mw nuclear steam-electric station on the Missouri River to assist in meeting loads by 1971 or 1972. Various proposals for the construction of extra high voltage transmission lines are also under consideration which would strengthen transmission networks within Nebraska and with nearby power sources. For example, efforts are underway to secure rights-of-way for a 345-kv line to permit U.S. Bureau of Reclamation power to be brought into Nebraska.

The Omaha Public Power District plans for 1970 and later include a 500 mw nuclear generating unit near Fort Calhoun and the construction of a 345 kv line between Omaha and Sioux City. This is a section of the planned twin cities, Sioux City, Omaha, Kansas City 345 kv line. Although no additional generating capacity is expected to be constructed in the Western Nebraska System through 1970, a 230 kv line from Stegall to North Platte under suitable arrangements could strengthen Nebraska ties with the U.S. Bureau of Reclamation's system.

Whether these sources, if eventually developed, will need to be supplemented by other sources is not decisive in disposing of this application. They do indicate, however, that the Nebraska utilities are actively planning for their future load demands.

*Financing*

It is proposed to finance the project by means of a bond issue. The only evidence of feasibility was a letter from Kuhn, Loeb and Company and the testimony of one of Kuhn, Loeb's partners. These indicated that financing by tax-exempt bond issue (of a non-profit organization to finance the project) would be feasible at a cost of 4½ percent to 5 percent provided certain conditions were met. Among the conditions is the following: "The Consumers Public Power District and other financially qualified purchasers shall have entered into contracts with the Company to take power from the Project (i) for a period of years at least equal to the term of the Company's obligations to be issued to finance the Project and (ii) at rates which will produce revenues during such period at least sufficient to provide for operation and maintenance expenses and replacement * * * and amortization of and interest on all obligations issued to finance the Project."

As has been said, Consumers has not entered into a contract with the Company to take power from the project, and its prospective purchase in 1970 of 100 to 150 megawatts will have to be from other sources. No other purchasers have entered into contracts with the applicant, and applicant has made no showing that they will do so. We do not require firm contracts before licensing hydroelectric projects if other evidence sufficiently shows ability to finance the project, as well as the marketability of the power. *Public Utility District No. 1 of Skamania County, Washington*, 32 FPC 444, 447. In this case, however, the evidence is that the project would be financed upon certain conditions, and one of those conditions was that there be firm contracts for sale of the power. There are no such contracts.

The evidence upon which the applicant relies is before the Commission, and legal arguments have been presented by both sides. The Administrative Procedure Act, Section 7(c), provides that a proponent of a rule or order has the burden of proof and this rule has been applied in numerous instances where an applicant for a license or some other privilege has failed to make out a case. See, *e.g.*, *Colorado Arizona-California Express, Inc.* v. *U.S.*, 224 F. Supp. 894 (D-Colo., 1963); *Great Northern Ry. Co.* v. *U.S.*, 209 F. Supp. 230 (D-Minn., 1962). *Cf. Courier Post Publishing Co.* v. *F.C.C.*, 104 F. 2d 213 (U.S. App DC 1939). This Commission has held many times that an applicant has the burden of presenting adequate evidence in supporting its application. See *e.g.*, *Amerada Petroleum Corp.*, 29 FPC 171 (1963); *Union Texas Petroleum*, 29 FPC 273 (1963); *H. L. Hunt*, 28 FPC 897 (1962) (reversed on other grounds *sub nom.*, *Margaret Hunt Hill, Trustee* v. *F.P.C.*, 335 F. 2d 355 (CA5–1964)).

The recently decided case of *Scenic Hudson Preservation Conference* v. *Federal Power Commission*, 354 F. 2d 608 (CA2–1965), does not detract from the logic of requiring an applicant for license to support adequately its application on the points involved in the motions to dismiss. The court in *Scenic Hudson* saw this Commission as a guardian or conservator of the public domain, charged with the affirmative duty of assuring that the public, the "third party in these proceedings", be represented and protected in compliance with the standards of Section 10(a) of the Act. Although nothing was added to this Commission's authority or responsibility by *Scenic Hudson*, its role as guardian of the public domain was highlighted. See *First Iowa Hydro-Electric Coop.* v. *F.P.C.*, 328 U.S. 152 (1946); and *F.P.C.* v. *Idaho Power Co.*, 344 U.S. 17 (1952). Where the applicant has shown that its proposed project can and will operate economically as a power project, the Commission nevertheless has the affirmative duty to act only if the record is adequate to make a reasoned decision on whether the proposed project is or can be conditioned to be one which will be "best adapted to a comprehensive plan" for developing the waterway involved not only for power purposes but also for other public purposes, such as navigation, flood control, irrigation, wildlife, conservation and recreation, as required by Section 10(a) of the Act. But until the applicant has made a reasonable showing that it could accomplish its power objectives, it seems useless to proceed.

We disagree with the dissent that the public interest would be served by proceeding further with this case. The problem with which the court was concerned in *Scenic Hudson* was whether to issue a license for a project without adequately considering alternatives to the development proposed. Here, however, the Commission is refusing to go forward in a formal hearing on a license application since the applicant, despite repeated requests, has not shown that it has a reasonable chance of marketing the power and financing the project. Thus, on the facts alone *Scenic Hudson* is distinguishable from the instant case. More important, however, than the different factual situation under which *Scenic Hudson* arose, is the effect its application in this proceeding would have on the administrative process. We are faced with a case where the applicant has failed to make even a threshold showing that the project would be in the public interest. *Scenic Hudson*, under the circumstances of this case, does not require the Commission to assume the applicant's burden of proof.

We are of the opinion that applicant has not made a sufficient showing either of financial feasibility or of a market for the power. The motion to dismiss the application should therefore be granted. This dismissal is without prejudice to any later application which may be made supported by a sufficient showing of financial feasibility and a market for the power.

Oral argument would not remedy the lack of evidence in the record. Under the circumstances, we think the request for such argument should be denied.

*The Commission finds:*

(1) Intervention by the Nebraska Power Review Board should be permitted.

(2) The evidence submitted by applicant in support of the availability of a market for the power proposed to be produced by Project No. 2289, and the evidence of ability to finance the project, is inadequate to support the application.

*The Commission orders:*

(A) The request of applicant for oral argument on the motion to dismiss is denied.

(B) Intervention of the Nebraska Power Review Board is hereby granted.

(C) The motion to dismiss applicant's application for license for Project No. 2289 is granted.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

The question raised in this matter is whether the Commission should dismiss an application for a hydro-electric license under Section 10(a) of the Federal Power Act before all the evidence has been submitted. Here, the majority is dismissing an application for a license for a hydroelectric project. It does so before all the evidence has been submitted which precludes an evaluation of the merits of the proposed project. The majority bases its action principally on the inability of the applicant to interest utilities serving the areas to purchase the output of the proposed project. This approach represents a narrow and restrictive interpretation of our responsibilities to which I cannot subscribe.

First, as a practical matter, I do not believe that the Commission's time would be wasted were we to allow the record to be fully developed. It is true that this Commission has no authority to force utilities to purchase the energy produced by a hydroelectric project. It is also true that this Commission should not license a project where there is no prospect for the utilization of the power to be produced. Nevertheless, the public at large has a right to know whether the utilities are being arbitrary in refusing to agree to purchase power the project would generate. To the extent alternative sources of power would be more costly, the public should be apprised of any reasons which might justify the disinterest of the neighboring utilities in the project. The public will only come to know the facts if this Commission satisfies the duty it has to present them. In this connection, the Commission often has knowledge not generally available to private parties. For example, data on the costs are within our particular expertise. Such evidence must be adequately developed. Only in this way will the general public be in a position to make an informed judgment respecting the performance of the utilities serving them.

If it ultimately developed that the refusal to purchase by the utilities was unreasonable, and the Commission disclosed this fact, the public at large would then be in a position to make a judgment and to make that judgment known. And let no one underestimate the influence of the public in such matters. If, on the other hand, the refusal were justified, the proposed project would receive at least a decent burial. The public then would not have nagging doubts that the Commission had been gulled and left a valuable site undeveloped for unexplained reasons.

As a legal matter, this Commission has been entrusted with the duty of representing the public in these kinds of cases. In quoting Section 10(a) of the Act in *Scenic Hudson*, the court declared: "Congress gave the Federal Power Commission sweeping authority and a specific planning responsibility." (354 F. 2d 608 at p. 613; see also p. 620–21.) "If the Commission is properly to discharge its duty in this regard, the record on which it bases its determination must be complete. The petitioners and the public at large have a right to demand this completeness." (*Scenic Hudson*, *supra*, p. 612; see also p. 621).

The Commission's responsibilities under Section 10(a) are closely related to its duties under Section 202(a). Under these sections, the Commission is obliged to consider the proper utilization and conservation of natural resources for the purpose of assuring an abundant supply of energy with the greatest possible economy, and to promote the voluntary interconnection and coordination of facilities for the generation, transmission and sale of energy.

Peremptory dismissal of the application forecloses any consideratio of our duties under these sections. The record is incomplete. Again, th court in *Scenic Hudson*, quoted from Judge Frank's decision in *Isbrandtsen Co. v. U.S.*:[1]

> This is a somewhat surprising contention, to be contrasted with the following views of Commissioner Aitchison of the Interstate Commerce Commission concerning the obligations of administrative agencies: "* * * The agency does not do its duty when it merely decides upon a poor or nonrepresentative record. As the sole representative of the public, which is a third party in these proceedings, the agency owes the duty to investigate all the pertinent facts, and to see that they are adduced when the parties have not put them in * * * The agency must always act upon the record made, and if that is not sufficient, it should see the record is supplemented before it acts. It must always preserve the elements of fair play, but it is not fair play for it to create an injustice, instead of remedying one, by omitting to inform itself and by acting ignorantly when intelligent action is possible * * *".

This Commission, as trustees of the public at large, is abandoning this licensing proceeding to the possible whims of certain parties. The majority is foresaking its broad planning responsibilities in favor of a "piecemeal, restrictive, negative approach of the River and Harbor Acts and other laws previously enacted"—an approach condemned in the *Scenic Hudson*, *supra*, and *First Iowa* cases.[2] Further, the majority forgets the memorandum of the Solicitor General to the Supreme Court: "It [the FPC] is well aware moreover, that the ultimate responsibility rests with it and that only its positive efforts will assure optimum development of the nation's waterways."

Such a restrictive approach is illustrated by the majority's interpretation of *Scenic Hudson.* In its view, the Commission's independent responsibility for assuring comprehensive development under Section 10(a) of the Act comes into play only after the applicant has established that "the proposed project can and will operate economically as a power project * * *" It adds: "Until the applicant has made a reasonable showing that it could accomplish its power objectives, it seems useless to proceed." In essence, the majority is saying that the Commission is concerned and exercises its independent responsibilities under Section 10(a) in areas such as navigation, flood control, irrigation, wildlife, conservation and recreation, but is not concerned with economic power supply—that is the applicant's job. Of course, this is untrue. *Scenic Hudson* involved more than scenery. Essentially, the Court told the Commission that it must insure that a complete record be made on alternative power sources.

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[1] 96 F. Supp. 883, 892 (S.D.N.Y. 1951, affirmed by an equally divided court, 342 U.S. 950 (1952).

[2] *First Iowa Hydro-Electric Coop. v. F.P.C.*, 328 U.S. 152 (1946).

Moreover, the Commission's concern with "assuring an abundant supply of electric energy throughout the United States with the greatest possibly economy"[3] is reflected in several of its actions. The National Power Survey is a good example. Perhaps closer to the point, the Commission regularly analyzes and makes suggestions regarding power generation to the Corps of Engineers and to the Congress regarding projects proposed by the Corps. In several cases, the Commission has proposed modifications to the Corps' plans which would permit the inclusion of hydroelectric power generation on an economic basis. In other cases, the Commission suggests changes in the nature of the Corps' proposed power project which would make it more economic. Do we have a responsibility to exercise our independent expertise regarding power generation for federal projects but not for those proposed by private parties? And do we have a different responsibility for reporting the results of our studies to the general public as compared to the Congress? I think not.

For these reasons, I dissent to the order dismissing the proceeding. While I sympathize with the impatience of the majority with this particular applicant, I strongly believe that this Commission's concern extends far beyond the interests of any applicant to the public at large, and that our responsibilities should be faced squarely irrespective of this applicant's delinquencies.[4] In my opinion, the case should proceed by providing that all interested parties, including Staff, adduce evidence and submit proposed findings respecting all relevant features of the proposed project.

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[3] Section 202(a) of the Federal Power Act.

[4] Significantly, this applicant has nevertheless expended considerable sums of money, approximately $1,500,000, and has adduced substantial evidence of a technical and economic nature in support of its application.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## GLAMORGAN PIPE & FOUNDRY CO., PROJECT NO. 2358

### ORDER ACCEPTING SURRENDER OF LICENSE (MINOR)

(Issued February 17, 1967)

On April 22, 1966, Glamorgan Pipe & Foundry Co., licensee for minor Project No. 2358, filed an application for surrender of the license for the project located on the right bank of the James River in Lynchburg, Virginia. The project is located between the City of Lynchburg's water works canal (from which the licensee takes water into its project) and the James River, into which the water is discharged at a point downstream from the project. No lands of the United States are affected by the project.

The project consists of an 8-foot diameter metal flume approximately 70-feet in length; a reinforced concrete flume intake structure in the aforementioned water works canal; a power plant containing a turbine connected to a 150 kw generator; and appurtenant facilities. The energy was used for industrial purposes.

The license for the project was issued on March 3, 1965, 33 FPC 396, for a period effective as of April 1, 1962, and terminating December 31, 1993.

According to available information, the last day of project generation was June 2, 1964. The power plant generating facilities have been removed and scrapped, and the only facilities remaining are the intake in the City of Lynchburg's water works canal, the eight-foot in diameter penstock, and the turbine pit with two discharges to the river, the upper one formerly serving as a pit skimmer, and the lower formerly handling the major quantity of the turbine's discharge. The licensee has covered the pit's lower discharge with a removable steel plate and is using and will continue to use the intake in the City's canal as a skimmer to remove trash and debris from the canal when water is taken therefrom and used in its industrial operation. No hazard to life or property is caused by the project facilities remaining in existence.

Annual charges under the license for the costs of administration of Part I of the Federal Power Act have been paid from the effective date of the license through December 31, 1965 in the amount of $37.53.

The U.S. Corps of Engineers has advised that surrender of the license and dismantling of the project would have no effect on navigation and no adverse effects on the Corps' interest are foreseen.

*The Commission finds:*

(1) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received.

(2) Acceptance of surrender of the license for the project is appropriate.

*The Commission orders:*

Surrender of the license for minor Project No. 2358 is hereby accepted, effective as of December 31, 1965.

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## OPINION NO. 515

## VIRGINIA ELECTRIC & POWER COMPANY, DOCKET NO. E-6684

### OPINION AND ORDER DETERMINING ANNUAL CHARGES FOR BENEFITS FROM HEADWATER DEVELOPMENTS

(Issued February 17, 1967)*

*Syllabus*

1. Commission practice in evaluating potential hydroelectric projects, where capability would be lost due to flood flows, has been to credit project with full capacity value where capability will be available 95 percent of time. P. 345.
2. Under instant circumstances, Commission *concludes* Licensee's Roanoke Rapids project has not realized any *dependable capacity gain* as result of operations of upstream federal projects. [John H. Kerr and Philpott] P. 346.
3. Commission *finds* that Roanoke Rapids experienced energy gains from upstream improvements in amount of $983,300 for the period involved. P. 347.

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*Initial decision appears on p. 353. Opinion No. 515-A and order issued April 17, 1967 denying application for rehearing, 37 FPC 767.

4. **Dead storage facilities at Philpott and Kerr are integral to impoundment and capital invested in such facilities should be included in computation of Section 10(f) costs. P. 348.**
5. **Value of power at federal headwater improvements is price at which it can be marketed under Section 5 of the Flood Control Act of 1944, requiring that it be marketed at cost. P. 349.**
6. **It was proper to exclude evidence on Licensee's claim for offsets against Kerr based on minimum off-peak releases required for pollution abatement and low water regulation. P. 349.**
7. **There is no authority under Federal Power Act which permits suggested transfer of administrative charges under Section 10(e) to Section 10(f). PP. 350, 351.**
8. **In a proceeding under Section 10(f) of the Federal Power Act, Commission *determines* annual charges for benefits from headwater developments.**

***George D. Gibson, Patrick A. Gibson, T. Justin Moore, Jr.* and *George C. Freeman, Jr.* for the Virginia Electric & Power Company.**

***Curtis H. Bell* for the United States Department of Interior.**

***Joseph B. Hobbs* and *George F. Bruder* for the Staff of the Federal Power Commission.**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

CARVER, *Commissioner:*

In 1951 the Commission licensed the Virginia Electric & Power Company (Vepco) to build a hydroelectric project at Roanoke Rapids on the Roanoke River. The Secretary of the Interior (Interior) and certain cooperatives contested this licensing on the grounds that Congress had pre-empted the site for federal development, occasioning appeals which led eventually to affirmance by a divided United States Supreme Court. *United States* v. *Federal Power Commission*, 345 U.S. 153 (1953).

The proceeding now before us calls for the determination of Vepco's liability under Section 10(f) of the Federal Power Act for the headwater benefits conferred upon its Roanoke Rapids Project by the upstream federal John H. Kerr and Philpott Projects. Vepco was issued its license in contemplation of this liability, but since at the time the Kerr Project (then known as Buggs Island) was not completed, the Commission found that the amount of the payments for headwater benefits could not be estimated with any degree of accuracy until after the projects had been in operation for such time as necessary to demonstrate actual benefits conferred.

The Commission instituted the investigation in this docket in 1956. The Commission's staff completed two studies, and in April 1964 recommended that Vepco be assessed $983,300 plus costs of $33,900 for energy gains conferred upon Roanoke Rapids by Philpott and Kerr during the period August 1, 1955 through December 31, 1962. Vepco disputed this assessment, claiming among other points offsetting benefits from it to Kerr. The Commission disallowed Vepco's claim for offset on December 21, 1964 (32 FPC 1494),[1] and billed Vepco for an interim partial payment of $559,990, plus costs of $33,900.[2] Vepco applied for a rehearing and stay, which the Commission denied at the same time ordering a public hearing on a total assessment for headwater benefits in this docket, and permitting the Secretary of the Interior to intervene.

At the hearings in June and July 1965, staff asserted for the first time that Vepco had received a gain in "dependable capacity" as well as energy gains, and recommended that Vepco's assessment be increased to $2,547,300 plus costs.

On March 28, 1966, the Presiding Examiner, Harry C. Shriver, issued an initial decision in which he found that Vepco had realized 386,894 megawatt hours of energy gains from August 1, 1955 through December 31, 1962, and a gain of nine megawatts of "dependable capacity" for each year in this period as the result of the headwater benefits provided to Roanoke Rapids by Kerr and Philpott. He concluded that a total assessment of $2,057,500 plus costs of $43,986 was due from Vepco.

The proceeding is before the Commission on the examiner's decision, exceptions filed by Vepco, Interior, and by staff, and the oppositions to these exceptions. The basic issue is whether the examiner was correct in finding that the federal projects conferred a dependable capacity gain of nine megawatts to Roanoke Rapids. Vepco asserts that there was no gain in dependable capacity; Interior claims the gain should be 35 megawatts, or at the very least, 17 megawatts; and staff asserts that the gain should be 14 megawatts.

Other issues involve the correctness of the examiner's computation of the value of energy and capacity gains.

We find that the issues in this proceeding have been adequately covered in the briefs and exceptions and Vepco's motion for oral argument should be denied.

## *Background*

The examiner's initial decision sets forth the factual background of this proceeding, describing the Roanoke River basin and the project works, dams, and reservoirs constructed on the river and its tributaries.

Section 10(f) of the Federal Power Act provides among other things that whenever a licensee is directly benefited by the construction work of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition to the license, that the licensee shall reimburse the United States for such part of the annual charges for interest, maintenance, and depreciation of the headwater improvement as the Commission may deem equitable. The portion of such charges to be paid is determined by the Commission. The cost of making such determination, as fixed by the Commission, also must be paid to the United States.

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[1] This disallowance was in effect sustained by the Court of Appeals for the Fourth Circuit on October 6, 1965, in *Virginia Electric & Power Company v. Federal Power Commission*, 351 F. 2d 408 (CA4–1965), as discussed herein at page 349.

[2] The assessment of $559,990 was based upon Vepco's statement in its letter to the Commission of July 27, 1964, that using staff's formula, it computed the benefits conferred upon Roanoke Rapids to total only $559,990.

Of the two United States headwater improvements involved in this proceeding, Philpott is located on the upper reaches of the Smith River, a tributary of the Roanoke, in Virginia at river mile 337, and Kerr is on the Roanoke River in Virginia and North Carolina at river mile 179. Vepco's Roanoke Rapids lies approximately 42 miles downstream from Kerr on the Roanoke River at river mile 137.

Philpott and Kerr were both constructed by the U.S. Army Corps of Engineers, primarily for flood control and electric power production, and were completed in 1953. Philpott's storage capacity is 198,060 acre-feet, while that at Kerr is 2,750,349 acre-feet.

Roanoke Rapids was completed by Vepco in 1955. Its power plant has a nameplate rating of 100,080 kilowatts, and consists of four 25,020 kilowatt generators, each driven by a turbine rated at 35,000 horsepower under a net head of 74.5 feet. The four turbines together evacuate a maximum of 20,000 cubic feet of water per second. Roanoke Rapids' small reservoir has a total storage capacity of 77,140 acre-feet, about 2.8 percent that of Kerr.

### *Dependable Capacity Gain*

The examiner determined that Vepco had realized a gain of nine megawatts of "dependable capacity" for each year in the period August 1, 1955 through December 31, 1962, by reason of the operation of the Kerr and Philpott projects, and he concluded that the total value of such gain was $1,569,156. For the reasons set forth below, it is our opinion that the record in this proceeding does not warrant this conclusion and that Vepco's exceptions to the examiner's holdings on the question of dependable capacity gains are well founded.

The Commission has defined the term "dependable capacity" in FPC Form 12, Schedule 16, as follows:

> The dependable capacity of system hydro plants, as defined for Schedule 16, relates to the capacity which under the most adverse flow conditions of record can be relied upon to carry system load, provide dependable reserve capacity, and meet firm power obligations, taking into account seasonal variations and other characteristics of the load to be supplied and of the firm power obligations. Some systems may be able to utilize off-peak

> energy from other systems so as to increase the dependable capacity of the reporting system hydro plants. * * * In cases where the stream-flow records indicate that the most adverse flows are not likely to occur except at long intervals of time and are likely to be of very short duration, the figures used in determining the capacity available from hydro plants may be modified, treating such abnormal limitations as an emergency condition to be covered by the reserve capacity. * * *

The examiner predicated his findings of dependable capacity gain upon the testimony of staff's witness that the Roanoke River system is subject to periodic flooding, currently regulated by the federal projects; that without this regulation, flooding at Roanoke Rapids would cause more water to spill than the turbines could use, thus raising the tailwater and reducing the effective head; that this flooding can occur at any time of the year, including the months when Vepco's peak load is experienced; and that whereas the plant capacity at Roanoke Rapids is 103 megawatts on the regulated river,[3] this capacity would total nine megawatts less or 94 megawatts on an unregulated river in the event of a flood flow of 100,000 cubic feet per second past Roanoke Rapids. According to staff, a flood of this proportion has a probability of recurrence frequency of about one year in ten.

The question whether a nine megawatt gain in plant capability during a flood of 100,000 cubic feet per second,[4] is assessable within the purview of Section 10(f) of the Federal Power Act is raised by Vepco's assertions that flood flow of 100,000 cubic feet per second is not likely to occur except at a long interval of time, about once in ten years, and then should be of such short duration, approximately less than five days, as to constitute an emergency condition to be covered by Vepco's reserve capacity. Vepco stated that its minimum reserve capacity had increased from 100,000 kw in 1955 to 230,000 kw in 1962, and it contended that a possible loss of nine megawatts during a period of less than five days out of the 3,650 days in a decade would be of no noticeable significance in relationship to its total capabilities. We find that there is merit in Vepco's position.

Although the record supports the examiner's finding that a flood flow of 100,000 cubic feet per second at Roanoke Rapids has a probability of recurrence frequency on an unregulated river of about one year in ten, the record also shows that the likely duration of such a flood would be less than five days, and that the probability that this flooding would occur at the time of Vepco's peak load is indeed remote. Thus, during the years 1955 and 1956, Vepco experienced its annual peak load in December. Yet, according to the streamflow records of the Roanoke River, dating back to 1912, no flood of 100,000 cubic feet per second occurred at Roanoke Rapids during the month of December. Again, in 1957, Vepco's annual peak load took place in June. There is no record of a flood of 100,000 cubic feet per second on the Roanoke River during the month of June. During the years following 1957, Vepco has experienced its annual peak load during the summer months of July or August, months in which, prior to the regulation by the federal projects, floods of approximately 100,000 cubic feet per second or greater have flowed past Roanoke Rapids. Yet, the number of such floods during these two months from 1912 forward, including a period of 38 years during which the Roanoke River was not regulated, was no more than three. It is plain from the foregoing data that the probability of impairment of plant capability at Roanoke Rapids by reason of a flood of 100,000 cubic feet per second at the time of Vepco's peak load is far less frequent than one year in ten.

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[3] Normally, a plant's capability may exceed its nameplate rating from 10 to 15 percent. In fact, the manufacturer of the turbines at Roanoke Rapids estimated their capability to be 117 megawatts. The examiner accepted Vepco's claim, and we believe properly so, that Roanoke Rapids' capability is limited to 103 megawatts because of cavitation resulting from the fact that the turbines were set too high in relation to tailwater elevation.

[4] There is substantial evidence in the record, including statements by staff's witness and by Vepco's witness, to support the finding that the plant capability at Roanoke Rapids would be impaired by approximately nine megawatts on an unregulated river in the event of a flood flow of 100,000 cubic feet per second.

With respect to the flood flows of less than 100,000 cubic feet per second, it may be noted that the record shows that Roanoke Rapids can be operated at full capability of 103 megawatts with a flow of 66,000 cubic feet per second. A flow of 70,000 cubic feet per second would reduce the capability by about one megawatt, while a flow of 80,000 cubic feet per second would reduce the capability by about four megawatts. Records of the streamflow at Roanoke Rapids show that during the 38-year period from 1912 through 1949 when the river was not regulated, there were 34 floods having a flow of 70,000 cubic feet per second or greater. These 34 floods extended over a combined total period of 70 days. Three of these floods occurred in each of the months of July and August, one in the month of December, and none in June. It has been estimated that had Roanoke Rapids been in operation during the 38-year period from 1912 through 1949, the above number of 34 floods would have reduced its capability by a total of 478 megawatt-days, or an average of 12.6 megawatt-days per year. The full capability rating of Roanoke Rapids therefore would have not been impaired by flooding about 99.5 percent of the time.

Commission practice in evaluating potential hydroelectric projects on other rivers, such as the Ohio, where capability would be lost due to flood flows, has been to credit the project with full capacity value where the capability will be available 95 percent of the time. In the present case, even assuming that a flood of 100,000 cubic feet per second has a probability of recurrence frequency of one year in ten, the capability of Roanoke Rapids will not be subject to loss by reason of such a flood on an unregulated river approximately 99.8 percent of the time during a ten-year period, and, as shown above, its capability would not have been subject to loss by reason of a flood of 70,000 cubic feet per second or greater approximately 99.5 percent of the time during a 38-year period. Under these circumstances, we believe that it is appropriate to credit Roanoke Rapids with full dependable capacity value insofar as any impairment by reason of flood may be involved, and to regard any possible loss in plant capability in the event of a flood of 70,000 cubic feet per second or greater on an unregulated river as an emergency condition to be covered by Vepco's reserve capacity. We therefore find it reasonable to conclude that Roanoke Rapids has not realized any dependable capacity gain as the result of the operations of the upstream federal projects.

The federal projects, however, may have assured Roanoke Rapids some benefits in the form of plant capability gains during the relatively short periods of time when, but for the existence of the federal projects, the flood flow past Roanoke Rapids would have exceeded 70,000 cubic feet per second. In fact, testimony from Vepco's witness indicates that the protection afforded Roanoke Rapids against a flood flow of 100,000 cubic feet per second was equivalent to a plant capability gain of nine megawatts. In ascertaining whether a gain of this type has value, one possible method would be the computation of the cost, if any, of the capacity required to replace that which would have been lost in the case of flooding, with consideration given to whether this replacement would be made from Vepco's own reserve capacity, or whether it would have to be acquired by purchase from an interconnected system. We believe, however, that the consideration and ultimate disposition of the extent and value, if any, of such gains should be reserved for future proceedings regarding the Roanoke Rapids project.

### *Energy Gains*

The energy gains received at Roanoke Rapids as the result of the regulation of river flow by the upstream improvements are measured in kilowatt-hours, and consists of the difference between the energy actually generated at Roanoke Rapids on the regulated river during the period under study and the lesser amount of energy which it is computed would have been generated on the unregulated river.

At the time the Commission licensed the Roanoke Rapids project, it was estimated that the energy gains would total as much as 70,000,000 kilowatt-hours annually. Staff's computations, which are based on actual records of the daily inflows and outflows at Philpott and at Kerr, and on the daily turbine discharges at Roanoke Rapids, showed total net energy gains for the period August 1, 1955, through December 31, 1962, of 386,894,000 kilowatt-hours, or an average annual net gain of 52,142,000 kilowatt-hours. Staff determined that the monetary value of these energy gains was $1,231,175, and that on the basis thereof the Section 10(f) annual costs chargeable to Roanoke Rapids for the period August 1, 1955, through December 31, 1962, totaled $983,300. The Examiner has set forth in full detail the different steps in staff's computations, the mathematical, engineering, and financial bases for its calculations, and the intermediate tabulations leading to its final findings. In arriving at these findings, staff made certain specific adjustments to reflect the energy savings which Vepco could have accomplished on an unregulated river by pre-draw operations,[5] and to show energy gains made available to Vepco by the federal projects' regulation of the number of high flow periods.[6]

We find that the Examiner's presentation and analysis of the various contentions of the parties with reference to the energy gains realized by Roanoke Rapids is so complete and so well-reasoned as to merit our approval and adoption without further elaboration in this opinion and order. We further find that the evidence of record furnishes ample support for the Examiner's holding in favor of staff's method of computation and staff's final determination of the amount of annual costs chargeable to Roanoke Rapids. It is appropriate in this connection to point out that the procedure used by staff in this case is substantially the same as that which was reviewed and approved in *South Carolina Electric & Gas Co.* v. *Federal Power Commission*, 338 F. 2d 898, 905 (CA4–1964).

Consideration has been given to Interior's exception to the Examiner's ruling on the pre-draw operations at Roanoke Rapids, but we are not persuaded that this ruling should be changed. The Examiner adopted staff's estimate that Vepco could have conducted pre-draw operations on the unregulated river with sufficient accuracy to have accomplished energy savings of approximately 8,959,000 kilowatt-hours during the period under study. In so doing the Examiner rejected the mutually extreme positions of Vepco, on the one hand, that its energy savings from such operations would have totaled 89,657,000 kilowatt-hours (or about ten times that allowed by staff), and of

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[5] A pre-draw operation is one where water impounded in a reservoir is released through turbines to make storage available for anticipated high flows, and thereby avoid spilling. Staff determined that without the Philpott and Kerr reservoirs the Roanoke Rapids project would experience more periods of river high flow than with a regulated river. Staff estimated that Vepco would be able to anticipate these periods of high flow with sufficient accuracy to accomplish pre-draw operation which would net Vepco energy savings of approximately 8,959,000 kilowatt-hours during the period under study.

[6] Staff estimated that Philpott and Kerr benefited Roanoke Rapids by limiting the number of high flow periods, thereby increasing the net head at Roanoke Rapids, and conferring a total further energy gain of 22,692,000 kilowatt-hours for the period August 1955 through December 1962.

Interior, on the other hand, that no savings could have been accomplished.

The record shows that the conclusions reached by the parties as to the success or failure of the pre-draw operations are based essentially upon assumptions and estimates which are subject to considerable variation. Under these circumstances, the position of Interior that no energy savings could have been accomplished by pre-drawing appears to be unreasonable. An adequate body of testimony and evidence furnishes support for staff's calculation, and the amount of savings so calculated by staff is indeed most reasonable. The Examiner's ruling on this question is approved by the Commission.

### *The Computation of Section 10(f) Costs*

Vepco has taken exception to the Examiner's approval of staff's computation of the total average charges due from Vepco on the ground that staff improperly included in its computations capital costs invested in dead storage utilization at the federal developments. Vepco argues that Roanoke Rapids receives no power benefits from the waters impounded in dead storage at Philpott and Kerr because these waters are never released and, in fact, are required to provide the necessary minimum head for the turbo-generators located at the upstream dams.

A substantially similar argument was considered and was rejected by the Commission in *South Carolina Electric & Gas Co.*, 29 FPC 624 (1963), where we declined to make any reduction in the Section 10(f) costs in consideration of the head function of the headwater improvements. The Commission was sustained on appeal in *South Carolina Electric & Gas Co.* v. *Federal Power Commission*, 338 F. 2d 898 (CA4–1964). In this case we find that the Examiner correctly held that the dead storage facilities at Philpott and Kerr are integral to impoundment, and that the capital invested in these facilities should be included in the computation of Section 10(f) costs. Obviously, the foundation, base, and wall structure of a dam which serve the purpose of impounding water in dead storage, also serve the purpose of supporting higher wall structures which retain water for power storage. As staff pointed out in its brief opposing Vepco's exceptions, the "inescapable fact is that the headwater improvements were built and are operated as units, and that the headwater benefits derive from these units, and not from some hypothetical part of them".

### *Power Value at Site*

The Examiner fixed the value of the headwater improvements allocated to power to at-site power production on the basis of their cost. In its exceptions Vepco asserted that this value should be calculated instead on the basis of the cost of an alternative steam generating facility. Vepco's proposal would have the effect of increasing the value of the headwater improvements allocated to power at Philpott and Kerr, thereby decreasing the assessment charged to Roanoke Rapids.

We reject Vepco's contention. As staff explained in its brief opposing exception (page 11), the value of the power at the federal headwater improvements is the price at which such power can be marketed under section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), requiring that it be marketed at cost. The Commission held in *South Carolina Electric & Gas Co.*, 29 FPC 624 (1963), that the value of the headwater improvements allocated to power to at-site power production is properly fixed at cost. On appeal, the Fourth Circuit upheld the Commission and explicitly rejected the argument which Vepco has here restated. *South Carolina Electric & Gas Co.* v. *Federal Power Commission*, 338 F. 2d 898 (CA4-1964). Vepco's argument is foreclosed by this precedent.

### *Offsetting Benefits by Roanoke Rapids*

At the hearing Vepco again raised the claim which we had earlier rejected in our order of December 21, 1964 (32 FPC 1494), that Roanoke Rapids contributed benefits to Kerr which offset the energy gains conferred by the upstream developments in that Roanoke Rapids made the minimum off-peak releases required by the Public Health Service for pollution abatement and low water regulation, and in so doing relieved Kerr of its obligation to make such releases. Vepco advanced its claim prior to the decision of the United States Court of Appeals for the Fourth Circuit, sustaining our order of December 21, 1964. *Virginia Electric & Power Company* v. *Federal Power Commission*, 351 F. 2d 408 (CA4-1965). The court there affirmed the Commission's authority to order the payment by Vepco of an interim benefit assessment, and in considering Vepco's claim for an offset credit pointed out that this claim involved a legal question which had already been resolved against Vepco's contention in *South Carolina Electric & Gas Co.* v. *Federal Power Commission*, 338 F. 2d 898 (CA4-1964). Clearly, the Examiner properly excluded Vepco's proffered evidence on the above point, and we find that he correctly relied upon the precedent of the *South Carolina Electric & Gas Co.* case, *supra*, in ruling that Roanoke Rapids conferred no offsetting credits to Kerr which may be recognized under Section 10(f) of the Act.

### *Economic Feasibility*

In its exceptions Vepco has asserted that the Examiner's proposed assessment, which averages approximately $280,800 per year, constitutes a repudiation of the Commission's original licensing order of 1951 in which the Commission found that, without any benefits of upstream regulation, Vepco would realize annual savings of $150,000 in constructing Roanoke Rapids as compared with the construction of a steam plant of the same capacity (91 megawatts).

The Commission considered the economic feasibility of the Roanoke Rapids project in 1951 on the basis of Vepco's representation that this project would cost approximately $27,000,000 and would have a total installed capacity of 91 megawatts. It was at that time determined that the river regulation by the federal upstream projects might enable Roanoke Rapids to generate as much as 70,000,000 kilowatt-hours more energy each year than it would generate on natural streamflow, that such 70,000,000 kilowatt-hours of additional average energy would cost Vepco about $250,000 if obtained from a steam plant, and that the payment by Vepco to reimburse the United States for headwater benefits actually conferred could not equitably exceed an average of $250,000 annually.

By reason of our determination in this opinion that Vepco has not realized any dependable capacity gains at Roanoke Rapids as the results of the operations of the federal upstream projects, the assessment to Vepco for the period here involved will total $983,300, without costs, or an average of $132,520 per year. This sum is far less than the maximum amount contemplated in 1951.

### *Gaston Reservoir*

We find no merit in Interior's exception to the fact that the Examiner did not find that the Kerr project directly benefited Roanoke Rapids by filling Vepco's new Gaston Reservoir rapidly in October 1962. This particular matter was not included in staff's investigation, and Interior has admitted that the record here may not be adequate to make its requested finding. We are of the opinion that this question should be covered in future proceedings regarding the Gaston development.

### *Administrative Charges under Section 10(e) of the Act*

Interior has taken exception to the allowance by the Examiner of 0.025 mills per kilowatt-hour collected for the administration of Part I of the Federal Power Act as a part of the incremental cost of generation at Roanoke Rapids. Noting that Vepco has already paid the 0.025 mill levy under Section 10(e) on energy gains, Interior has proposed that the Section 10(f) determination in this proceeding be not diminished by such levy, but that the levy so collected be transferred and added to the payment which Vepco will be required to make under Section 10(f). Interior's request is denied. We know of no authorization under the Act which would permit the suggested transfer to be made.

*The Commission further finds:*

The Presiding Examiner's initial decision issued herein on March 28, 1966, should be reversed as hereinabove set forth with respect to his findings and conclusions on the issue of dependable capacity gains. Moreover, there is an indication in the record that Roanoke Rapids realizes plant capability gains as a result of the construction and operation of the upstream Kerr and Philpott projects; it is not possible for us to ascertain the extent and value of those gains on this record. Accordingly, there should be reserved for determination at a later date what further charges should be assessed against Vepco to reflect such plant capability gains for the period between August 1, 1955 and December 31, 1962. In all other respects, the Examiner's initial decision should be adopted as the decision of the Commission as of the date of issuance of this opinion. Apart from Vepco's exceptions on the issue of dependable capacity gains, which should be allowed, and apart from our reservation on the question of plant capability as discussed above, all other exceptions to the said decision should be denied.

*The Commission orders:*

(A) The Presiding Examiner's initial decision issued herein on March 28, 1966, is reversed as herein set forth on the issue of dependable capacity gains, and to the extent that the Examiner's numbered findings and conclusions in said decision are adopted as part of this opinion and order, they are revised or deleted as follows:

(1) The Examiner's numbered paragraph (23) is revised to read:

There were no dependable capacity gains at the Roanoke Rapids development attributable to the Philpott and John H. Kerr developments during the period August 1, 1955, through December 31, 1962.

(2) The Examiner's numbered paragraphs (24) and (25) are deleted.

(3) The Examiner's numbered paragraph (27) is revised to read:

The annual charges for interest, maintenance and depreciation on the Philpott and John H. Kerr developments' joint-use facilities allocated to power are apportioned to the Roanoke Rapids development as follows: $103,800 for 1955 (from August 1); $4,100 for 1956; $153,000 for 1957; $200,800 for 1958; $68,400 for 1959; $194,500 for 1960; $90,300 for 1961; and $172,300 for 1962.

(4) The Examiner's numbered paragraph (28) is revised to read:

The total annual charge apportioned to Roanoke Rapids in (27) for the period August 1, 1955, through December 31, 1962, is $987,200. A reduction of $3,900 is allowable for the effect on the apportionment from possible headwater benefits provided to the four non-federal projects of Martinsville, Spray, Schoolfield, and Riverside. The remaining annual charge is $983,300.

(B) The Presiding Examiner's initial decision, as revised by the changes and deletions ordered in Paragraph (A) above, is adopted as the decision of the Commission as of the date of issuance of this opinion.

(C) Apart from the exceptions of Virginia Electric & Power Company on the issue of dependable capacity gains, which are allowed in Paragraph (A) above, all exceptions to the Examiner's initial decision are denied.

(D) In compliance with the requirements of Section 10(f) of the Federal Power Act, and of the Examiner's decision and this opinion, Virginia Electric & Power Company shall pay to the Federal Power Commission the sum of $983,300 plus $43,986 for costs of making this determination, less any amounts that may have heretofore been paid on account thereof,[7] which payment shall be made within 60 days from the date of issuance of this opinion.

(E) The liability, if any, of Virginia Electric & Power Company for a further assessment reflecting plant capability gains realized between August 1, 1955 and December 31, 1962, as a result of the operation and construction of the upstream Kerr and Philpott projects, shall be reserved for determination at a later date.

(F) The motion for opportunity to present oral argument before the Commission is denied.

Commissioner Ross *concurring.*

Ross, *Commissioner*, *concurring:*

I concur in the result of the majority but on slightly different grounds. First, in evaluating dependable capacity, it seems to me that the proper approach is to consider the value of the project to the prospective licensee without regulation at the time the plant was built and without regard to actual flows or peaks which might have occurred following installation of the plant. Secondly, I would be less inclined to find increases in capacity for high-flow conditions than for low-flow conditions since floods are generally of shorter duration than periods of low water conditions. The very definition of dependable capacity in FPC Form 12 provides for an exception which seems particularly apt in this respect for it recognizes that "abnormal limitations" of "very short duration" and infrequent occurrence are to be considered as emergency conditions which can be "covered by the reserve capacity".

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[7] The Commission's records show that Vepco has already paid $559,990 of the total assessment.

In this case, the past records of the unregulated river indicate that the floods of record were of short duration and infrequent occurrence. For all these reasons, I conclude that there was no gain in dependable capacity as a result of the subsequent Federal developments.

As a final comment, I note that the estimation of prospective events, particularly in water-related matters, is a difficult topic and facts like the worst flood of record have been used as rough guides in arriving at a reasonable figure for dependable capacity. However, as the process of estimating becomes more precise, as there is every reason to believe it will, it is quite likely that our present procedure for determining headwater benefits will be modified to reflect this greater precision. At such time, a combination of probabilities and systems analyses may enable us to limit many of the areas of controversy reflected in this proceeding.

## INITIAL DECISION

### OF THE PRESIDING EXAMINER DETERMINING ANNUAL CHARGES FOR BENEFITS FROM HEADWATER DEVELOPMENTS PURSUANT TO SECTION 10(f) OF THE FEDERAL POWER ACT

(Issued March 28, 1966)

SHRIVER, *Presiding Examiner:* This is a proceeding pursuant to Section 10(f) of the Federal Power Act, 16 U.S.C. 803f, to determine the sum payable for headwater benefits conferred upon the Virginia Electric & Power Company's Roanoke Rapids Project by reason of the upstream Philpott and Kerr Dams constructed by the United States.

The Act provides[1] among other things that whenever a licensed power project is benefited by a storage reservoir or other headwater improvement constructed by the United States, the Federal Power Commission (Commission) shall require as a condition to the license, that the licensee shall reimburse the United States for such part of the annual charges for interest, maintenance, and depreciation of the headwater improvement as the Commission may deem equitable, that the portion of such charges to be paid shall be determined by the Commission, and that the cost of making such determination, as fixed by the Commission, shall be paid to the United States by the subject licensee.

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[1] 10(f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission.

Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvement as provided in Section 17 hereof.

Whenever any power project not under license is benefited by the construction work of a licensee or permittee the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

As will be seen hereafter, the case is somewhat complicated not only because of the principles of hydraulics but also by a language facade in presenting the evidence.

The Roanoke Rapids Hydro-Electric Development, Project No. 2009, located on the Roanoke River in North Carolina and near the Virginia Boundary, was constructed pursuant to a license issued by the Commission on January 26, 1951, 10 FPC 1, and began operations on July 18, 1955. As of that date, the United States owned and had in operation two upstream dams, the Kerr Dam on the Roanoke River and the Philpott Dam on the Smith River, a tributary of the Roanoke. The Philpott Project was placed in commercial operation in October 1953 and the Kerr Project in December 1953.

On May 28, 1956, 15 FPC 1470, the Commission issued an order instituting an investigation under Section 10(f) of the Act to determine whether Virginia Electric & Power Company's Roanoke Rapids Project and certain other named projects[2] in the Roanoke River Basin were directly benefited by the upstream Philpott and Kerr Dams of the United States and, if so, to determine what portion of the annual charges for interest, maintenance, and depreciation of the upstream projects of the United States should be assessed against the projects so benefited.

Thereafter the Commission's Staff made a study of the hydroelectric plants in the Roanoke River Basin covering the period February 1951 through December 1957.[3] This report was furnished to Virginia Electric & Power Company (Vepco), to the Department of the Interior (Interior) and the Corps of Engineers, Department of the Army, for comment, and conferences were held between members of the Commission's Staff and representatives of Vepco in respect thereto. This report was followed by another, superseding the first report, and extending the period of study through December 31, 1962.[4] The latter report recommended that Vepco be assessed the sum of $983,300 for the benefits conferred by the upstream government dams for the period August 1, 1955 through December 31, 1962, and $83,900 for the cost of making the assessment up to and including April 10, 1964. Copies of the second report were furnished to Vepco by letter on April 29, 1964, with the request that comments be submitted before a recommendation was made by the Chief, Bureau of Power, to the Commission. On July 27, 1964, Vepco replied to this letter advancing two legal arguments in respect to the Staff report, and then set forth what it contended was the correct amount to be assessed for headwater benefits. Vepco submitted a figure of $559,990 as its computation of the value of the benefits conferred based on the Staff's apportionment formula but with taxes foregone.[5] This letter concluded with the statement, "As to any of the positions discussed above which the Commission is not prepared to accept upon receipt of the final recommendations of the Staff, we respectfully request a hearing".

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[2] These included the Martinsville, Spray, Schoolfield, and Riverside projects.

[3] See, Proposed Report on Investigation of Headwater Benefits, Roanoke River Basin 1951 through 1957, Docket No. E-6684, January 1962.

[4] Staff Report on Investigation of Headwater Benefits Roanoke River Basin, February 1, 1951 through December 31, 1962. Docket No. E-6684, April 1964. Ex. No. 1-A.

[5] Letter dated July 27, 1964, signed by R. M. Hutchinson, addressed to F. Stewart Brown, Chief, Bureau of Power.

On December 21, 1964, the Commission issued an order in the form of a letter and interim billing to Vepco for headwater benefits in the amount of $559,990, plus administrative costs through April 10, 1964, in the amount of $33,900, or a total of $593,890, 32 FPC 1494. This assessment was taken from Vepco's letter of July 27, 1964, and was deemed to represent the minimum owed by Vepco.

On January 12, 1965, Vepco filed an application for a rehearing and stay of the Commission's interim determination and billing of December 21, 1964. On February 11, 1965, the Commission denied Vepco's petition,[6] but ordered that a hearing be held as to the total assessments under Section 10(f) of the Act for the headwater benefits provided to the Roanoke Rapids Development of Vepco by the John H. Kerr and the Philpott reservoirs of the United States during the period August 1, 1955 through December 31, 1962, including the cost to the United States of the determination of such assessments, 33 FPC 200, 203. On April 9, 1965, the Secretary of Interior filed a petition to intervene which was granted on May 4, 1965.

A pre-hearing conference was held in the case on May 21, 1965. Hearings were held on June 1, 10, 22, and on July 6, 7, 9, 20–23, 1965.

The sole issue in the case is the determination of the amount payable to the United States for headwater benefits pursuant to Section 10(f) of the Federal Power Act.

*Description of Projects.* The projects involved in this proceeding all lie on the Roanoke River or its tributaries.[7] The average flow of the Roanoke at Roanoke Rapids is about 8000 cubic feet per second. This river system drains a basin along and slightly north of the Virginia-North Carolina line, extending from the Allegheny Mountains on the west to the river's mouth at Albemarle Sound on the east. The basin is triangular in shape, approximately 220 miles long from west to east, about 100 miles wide near its source, narrowing in the east and draining an area of approximately 9,580 square miles. The Dan River is south of the Roanoke River and is its principal tributary. It drains an area of 3,855 square miles. It flows into the Roanoke at Clarksville, Virginia, about 200 river miles above its mouth. The Smith River is the principal tributary of the Dan.

The Philpott Project is located on the Smith River in Virginia, about 19 miles upstream from the City of Martinsville. It consists of a concrete gravity dam, a reservoir, a powerhouse, generating equipment, and a switchyard. It was constructed by the Corps of Engineers, primarily for the purpose of flood control and the production of electric power. Construction was initiated in 1948. The Philpott reservoir has a total storage capacity of 198,060 acre-feet, of which 34,080 acre-feet are reserved for controlling flood flows, 110,010 acre-feet are utilized for the generation of power, and 53,970 acre-feet are considered as constituting dead storage. The power installation consists of one unit of 600 kilowatts and two of 6,700 kilowatts or a total of 14,000 kilowatts. These three generators were placed in commercial operation in September and October 1953. The power generated is marketed by the Southeastern Power Administration, Department of Interior.

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[6] Thereafter Vepco filed a petition in the United States Court of Appeals for the 4th Circuit for the purpose of setting aside the Commission's interim order of December 21, 1964, and after argument on June 30, 1965, the Court denied Vepco's petition on October 6, 1965. In this suit Vepco contended that the Commission was without authority to enter an order directing it to pay for any headwater benefits in the absence of a hearing and the compilation of a formal record. The Court held that an administrative hearing was not a condition precedent for an interim assessment where Vepco had conceded to minimal energy gains to the extent of the amount of the billing. 351 F. 2d 408, 409.

[7] See, Plate 1, on page 19 of the Staff's second report, Exhibit 1–A, reproduced in Appendix I hereto.

The John H. Kerr Project, the largest and second main upstream project, is located on the Roanoke River in Virginia and North Carolina. The main dam is in Virginia, about 20 miles downstream from Clarksville, Virginia. The project consists of a concrete gravity dam flanked on both sides by earth wing and saddle dikes, a reservoir, a powerhouse, generating equipment, a switchyard, and an earth dam and pumping station located at Island Creek so as to permit continued tungsten mining operations in the Valley of Island Creek. The project was constructed by the Corps of Engineers, primarily for the purpose of flood control and the production of electric power. Construction was initiated in February 1946. It was completed for flood control on May 31, 1952. The John H. Kerr reservoir has a total storage capacity of 2,750,349 acre-feet, of which 1,278,060 acre-feet are reserved for the control of flood flows, 1,028,789 acre-feet are utilized for the generation of power, and 443,500 acre-feet are considered as constituting dead storage. The power installations consist of one unit of 12,000 kilowatts, and six units of 32,000 kilowatts, for a total of 204,000 kilowatts. These generating units were placed in commercial operation during the period of November 18, 1952 through December 5, 1953. The power generated as in the case of Philpott is marketed by the Southeastern Power Administration.

The Roanoke Rapids Project, Licensed Project No. 2009, owned by the Virginia Electric & Power Company, is located on the Roanoke River in North Carolina and Virginia. The dam is upstream from the Town of Roanoke Rapids, North Carolina, about 42 miles downstream from the John H. Kerr Project, and about 199 miles downstream from the Philpott Project. The dam has a concrete spillway section 1,062 feet long with crest elevation at 109.5 feet and top of gates at 132.75 feet, a skimmer section 24 feet wide with crest at elevation 124 feet and top of gates at 132.75 feet, a concrete emergency spillway section 750 feet long with crest elevation 134 feet, and two non-overflow concrete sections 776 feet long with top at elevation 142 feet. The reservoir has a total storage capacity of 77,140 acre-feet at maximum power pool elevation of 132 feet. A pondage of 37,640 acre-feet is available between elevations 132 and 122 feet. The powerhouse contains four generating units of 25,020 kilowatts each for a total capacity of 100,080 kilowatts. The initial dates of operation of the generating units were July 18, August 24, October 6, and November 25, 1955, respectively. Vepco's estimate of average annual plant generation here, as reported to the Commission in 1960, was 325.5 million kilowatt hours (FPC Form No. 12).

The turbines at Roanoke Rapids are beneath the generators and directly connected with them. Each turbine is rated at 35,000 horsepower under a net head of 74.5 feet and at a speed of 128.6 revolutions per minute. Each unit will evacuate a maximum of about 5000 cubic feet of water per second, or a total of 20,000 cfs for the plant. (Ex. 37, 38; Tr. 303, 305.)

The Gaston hydroelectric development was licensed by the Commission as a part of Project No. 2009 and is located about 34 miles downstream from the John H. Kerr project, and at the head of the Roanoke Rapids pool. The Roanoke Rapids lake or pool is about 8 miles long. Construction began on the Gaston project in the spring of 1960. Its generating plant, with an installation of 177,920 kilowatts, went into commercial operation on February 1, 1963. This project develops the head between the John H. Kerr and the Roanoke Rapids projects, which is about 68 feet.

In addition to the three main projects involved in this proceeding, *i.e.*, Philpott, John H. Kerr, and Roanoke Rapids, there are four smaller projects located downstream from Philpott but above the Kerr project (the Martinsville, Spray, Schoolfield, and Riverside projects), having a combined installed capacity of 10,050 kw. These plants were built between 1904 and 1932. None have any significant storage. None of these small projects are licensed by the Commission. The staff found that any power gains received by these four plants were small, and that the cost of making studies in respect to them might exceed the value of the gains and thus the payments to the United States. The headwater benefits to these projects accordingly were not determined administratively by the Staff. The reasons for the Staff's action are set forth fully in its second report. (Ex. 1–A, p. 4)

It is manifest in respect to any hydroelectric project that the magnitude of generation at any time is dependent primarily upon two factors, namely, the head (or fall of the water) and the pondage (or volume). It is also manifest that the less variation there is in the flow of the river from day-to-day or seasonally, the more the project can be relied upon for an even production of electric energy. Accordingly, one of the purposes of a reservoir is to store water in times of high flow in a river for utilization in times of low flow. In this connection, it has heretofore been indicated that the Roanoke Rapids reservoir has a storage capacity of 77,140 acre-feet at maximum power pool elevation of 132 feet, and a pondage of 37,640 acre-feet between elevation 132 and 122 feet. The Philpott and the John H. Kerr projects by comparison have a combined total storage capacity of 2,948,409 acre-feet, and a combined total of 1,138,799 acre-feet utilized for the generation of power. The storage capacity of the Roanoke Rapids reservoir is in the neighborhood of 3 percent of the capacity at Kerr. Roanoke Rapids thus fills in a relatively short time and is essentially a run-of-the-river project. It depends heavily on the stream flow regulation by Kerr and to a lesser extent by Philpott. It is apparent, therefore, that the water impounded by the two upstream federal improvements provide a substantial contribution to the amount of energy produced at the Roanoke Rapids Project within the meaning of Section 10(f) of that statute.

## I

*Staff's Case—Costs.* One of the methods of arriving at the benefits to a downstream project, is to determine what energy gains there are, and what capacity gains there are, if any, by reason of the upstream improvements and then convert these gains into dollar amounts. The actual energy generated by a plant downstream from an upstream storage project is a matter of record. The next problem is to determine the amount of energy that the downstream plant would have produced if the upstream storage project did not exist. This must be determined, and the result must then be deducted from the actual generation in order to obtain the energy gains attributable to the upstream storage project.

Although the Act states that an assessment shall be made against a benefited project for headwater improvements, it does not state what part of the 10(f) cost (interest, maintenance, and depreciation) are to be assessed against the benefited project, or provide a yardstick for assessment.

The method by which the staff arrived at the recommended payment for benefits realized by the Roanoke Rapids plant is contained in its second report dated April 1964. (Ex. 1–A) The Staff's presentation at the hearing was based upon this report with some exceptions, particularly as to capacity gains. The Staff reached its determination by means of two major steps. First, it computed the so-called 10(f) costs*—the annual charges for interest, maintenance, and depreciation on the headwater improvements, that is, on the joint-use facilities of such improvements allocated to power. These costs were then apportioned between the hydroelectric plants at the headwater improvements and the plant at the downstream development, Roanoke Rapids. The apportionment was made in the ratio which the value of power produced at the headwater improvement bears to the value of the power gains at the downstream project. The payments to be made, or the method of determining the headwater benefits to the United States, is expressed by the Staff in the following formula:

$$P_n = C_p \times \frac{V_n}{V_f + V_d}$$

in which $P_n$=payment to be made for headwater benefits received at a down stream non-federal plant,

$C_p$=total annual 10(f) costs of the dams and reservoirs to be borne by power both at site and downstream,

$V_n$=net annual monetary value of benefits received at a downstream non-federal plant,

$V_f$=annual monetary value of the federal headwater improvements to at-site power production, and

$V_d$=net annual monetary value of benefits received at all downstream plants.

The Staff's determination of the cost of the headwater benefits is based upon information obtained from the Corps of Engineers which constructed the John H. Kerr and Philpott projects. The total capital costs of each project are assigned functionally to the specific power facilities[8] and joint-use facilities,[9] and the latter in turn are allocated either to flood control or to power. (Ex. 1–A, Table 2.) Similarly, certain allocations were made of the maintenance costs.

The Staff's capital cost of the joint-use facilities allocated to power in respect to the Philpott project for the year 1955 amount to $3,803,809, and for the year 1962 to $3,847,181. The capital cost for the joint-use facilities allocated to power in respect to the Kerr project amounts to $38,900,202 for the year 1955, and $39,601,419 for the year 1962. Specific figures for these years and the intervening years for both projects are set forth in Table 2.[10] The Staff utilized an annual rate of 2.50% for interest and 1.026% for depreciation—the latter is based on a 50-year 2.50% sinking fund. The dollar amounts for interest and depreciation for each project and for the respective years are contained in Table 3. The total for each year consists of the interest on the capital cost of the joint-use facilities allocated to power, plus the depreciation on such cost, plus the maintenance costs allocated to power. (Table 3) A summary of the total of such costs to be borne by power is as follows:

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*Based on data furnished by the Corps of Engineers.

[8] By specific power facilities are meant the powerhouse, turbines, generators, etc., which are said not to contribute to stream flow regulation (impounding) or benefits to the downstream development.

[9] Joint-use facilities are those which are considered as providing benefits to both the at-site (Philpott and Kerr) and the down-stream power plants, such as dams and reservoirs.

[10] Table 2 and the tables referred to hereafter are contained in Exhibit 1–A, a Staff exhibit, and are reproduced in Appendix I hereto.

TABULATION 1

| *Year* | *Total section 10(f) costs to power* |
|---|---|
| 1955 | $676,582 |
| 1956 | 1,622,827 |
| 1957 | 1,664,722 |
| 1958 | 1,657,733 |
| 1959 | 1,665,381 |
| 1960 | 1,708,611 |
| 1961 | 1,702,858 |
| 1962 | 1,695,404 |
| Total | $12,394,118 |

*Energy Gains.* As already indicated, the gains in energy generated at Roanoke Rapids which are attributable to the Philpott and the John H. Kerr projects are represented by the difference between the actual generation at Roanoke Rapids by reason of the existence of the upstream projects and the computed generation at Roanoke Rapids by reason of their non-existence.[11] The important criteria in determining the difference is to ascertain the additional usable flow which is made available, or withheld, by reason of the existence of the upstream projects and express this in kilowatt-hours. The usable flows are those which were or could have been used within the turbine capacity of the Roanoke Rapids plant. As indicated heretofore, the turbine capacity of the Roanoke Rapids plant is approximately 20,000 cfs.

The gains must necessarily be computed from the records of daily inflows and outflows at the headwater improvements. Thus, if water were stored at the upstream reservoirs, on a particular day, they would normally decrease the stream flow at Roanoke Rapids by the amount of the storage. On the other hand, if these plants released water from storage they would increase the stream flow at Roanoke Rapids by the amount of that released. There is, however, a lag by reason of the travel time so that storage or release from Philpott is estimated to affect the stream flow at Roanoke Rapids about four days later, and that from Kerr about one day later.

The Staff witnesses described the manner in which the energy gains were determined.

The effects of the Philpott and Kerr reservoirs on the natural flow of the stream are measured by the daily amounts of water either added to or drawn from the reservoirs. By utilizing operating data of the Roanoke Rapids plant, and the records of storage changes at the upstream projects, the amounts of each daily storage change which was made or could have been made within the turbine capacity of the downstream plant, was computed. (A sample of inflow computations for March 1960 is shown in Tables 4 and 5; Roanoke Rapids operation data for March 1960 is shown in Table 6; a sample computation for March 1960 of estimated energy gains at Roanoke Rapids is shown in Table 7. Except for the data contained in columns 8 and 12 of Table 7, the other data contained therein were copied from Tables 4, 5, and 6; see also Tr. 44, 45.)

The Staff concluded that on days when there is a net release of water from the combined upstream storage reservoirs, the amount of the net release usable at Roanoke Rapids is equal to the upstream storage release minus forced spill at

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[11] The Staff uses the word "regulation" to indicate the existence of the headwater improvements.

Roanoke Rapids.[12] On days when water is stored at the combined upstream reservoirs, the amount of this addition to storage which could have been used is equal to the lesser of (1) the amount of water added to the storage at the upstream reservoirs, or (2) the hydraulic turbine capacity less the actual use to (through) the turbines at Roanoke Rapids.[13]

By using the actual operation records of the Roanoke Rapids plant, the energy equivalent of unit flow was determined, that is, the kwh-per-cfs factor. This was done by dividing the daily generation by the daily flow through the turbines. The energy gains or losses for Roanoke Rapids due to the operations at Philpott and Kerr were then computed by multiplying the daily additions or reductions in usable flow at Roanoke Rapids by the daily kwh-per-cfs factor,[14] as determined from the actual gross generation and turbine-use records. In making the computations it was assumed that the ratio of the daily output to the flow through the turbines at Roanoke Rapids would have been the same each day under natural flow conditions as it actually was with regulated flows.

One of the assumptions of the Staff in making its calculations is that Roanoke Rapids is operated as a run-of-the-river development, that is, that water is used or spilled as it arrives without being stored.

While the sample calculation and testimony (Table 7; Tr. 45) disclose the Staff's method, calculations of energy gains were made for each day of the period August 1955 through December 1962. (Ex. 20; Table 8) The energy attributable to the releases from storage, representing the daily gains from headwater improvements to Roanoke Rapids, was added for each year, and the same was done for the energy attributable to additions to storage, representing the daily losses. The annual total for storage was subtracted from the greater annual total for release to obtain the basic annual gains. These amounts were later adjusted to account for two additional factors, namely, pre-draw operations and effect on net head. The Staff's computation of basic energy gains for the period is as follows: (Table 8; Tr. 45)

TABULATION 2.—*Basic energy gains*

| *Year* | *Energy gains (1,000 kwh)* |
|---|---|
| 1955 | 42,841 |
| 1956 | 286 |
| 1957 | 49,510 |
| 1958 | 72,325 |
| 1959 | 21,943 |
| 1960 | 85,444 |
| 1961 | 34,484 |
| 1962 | 66,328 |
| Total | 373,161 |

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[12] For example, 12,801 dsf (day second feet—a day second foot is one cubic foot per second flowing for one day) minus 6000 dsf or 6801 dsf. Table 7, line 1.

[13] For example, on March 13, 1960, the turbine discharge (column 9) was 3988 dsf. The additional amount which could have been passed through the turbines was 20,000 minus 3988 or 16,012 dsf. However, since only 4351 dsf were added to upstream storage, then only that amount or 4351 dsf, were considered to be the usable flow which was withheld due to upstream storage (regulation). On March 20, 1960, the turbine discharge (column 9) was 15,867 dsf. The additional amount of water which could have been passed through the turbine was 20,000 minus 15,867, or 4133 dsf. In this example, since 20,066 dsf were added to storage at the upstream projects, then the amount of unused turbine capacity, or 4133 dsf, is the lesser amount and thus the usable flow was considered to be withheld due to upstream storage (regulation). See, Table 7.

[14] The results for the sample computation of March 1960 are shown in Table 7. The figures in column 10 were divided by those in column 9 to get those in 11. The latter were then multiplied by those in 8 to get the energy gains shown in column 12.

*Pre-draw Operations and Effect on Net Head.* In the foregoing calculations no consideration was given to the fact that, absent the upstream reservoirs, Vepco on occasions might anticipate high-flow days, or periods, and draw down its reservoir at Roanoke Rapids, thus providing for some later storage or avoid spilling, and thereby reduce the total estimate of basic energy gains. Pre-drawing the head pond results in additional generation that otherwise might be lost by spill. Flows into a full reservoir at Roanoke Rapids and in excess of the turbine capacity of about 20,000 cfs would result in spill. In distinguishing the difference between the energy produced with the headwater developments and the lesser amount produced without them (regulation vs. unregulation) the pre-drawing results in reducing the headwater benefits and, in turn, the amount of payments to be fixed for them.

Manifestly, with the nonexistence of the Philpott and Kerr reservoirs there would be more periods of river high-flow at Roanoke Rapids than with them. The Staff calculations of energy savings from pre-drawing were obtained as follows: High-flow periods were selected as periods of two or three consecutive days during which the in-flow at Roanoke Rapids for at least one day was 22,000 dsf or more, and not less than 18,000 dsf for one other day. The water stored in the space made available by pre-drawing the headwater pond was assumed to be used for generation as soon as the hydraulic capacity of the turbines permitted. It was explained that this generation was considered to be the gain attributable to pre-draw operations. Storage space available in the head pond elevation below 130.0 (top of pool) prior to the 48-hour period was not considered to be pre-draw storage space. Thus, energy gains attributable to pre-draw operations were credited (1) to this prior space, because it was available first, and (2) to pre-draw storage space.

The Staff considered that pre-draw operations were effective in about 72 percent of the periods selected. A sample computation for the period February 9–16, 1957, showing generation gains credited to pre-draw operations, is shown in Table 9. The staff's estimated savings by year from pre-drawing at Roanoke Rapids (unregulated river) are as follows:

TABULATION 3.—*Energy savings from predrawing*

[48 hour predraw period]

| Year | Number of additional periods with natural flows | Estimated generation from predraw storage (1,000 kwh) |
|---|---|---|
| 1955 (from Aug. 1) | 0 | 0 |
| 1956 | 4 | 1,156 |
| 1957 | 1 | 289 |
| 1958 | 2 | 578 |
| 1959 | 5 | 1,445 |
| 1960 | 5 | 1,445 |
| 1961 | 8 | 2,312 |
| 1962 | 6 | 1,734 |
| Total | 31 | 8,959 |

The second factor affecting basic energy gains is that of net head.[15] Roanoke Rapids loses head during high flows because of increases in tailwater elevation. Loss of head results in a decrease in generation. High flows are limited by the reservoirs of Philpott and Kerr which result in increased head, thus increasing generation. The basic energy gains are therefore subject to adjustment—an increase—estimated by reason of the improved head. The Staff estimates the additional energy produced each year because of the headwater improvement's (Philpott and Kerr) effect on head as follows:[16]

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[15] It is generally accepted that the amount of energy that can be generated by a turbine is directly proportional to the distance between the elevation of the water in the reservoir and the maximum surface elevation of the water at the turbine discharge. This distance is sometimes referred to as "gross head" to distinguish it from "net head" which is arrived at by deducting any losses associated with the intake and discharge design of the system.

TABULATION 4.—*Energy gains from improved head*

| *Year* | *Amount (1,000 kwh)* |
|---|---|
| 1955 | 0 |
| 1956 | 2,232 |
| 1957 | 3,348 |
| 1958 | 744 |
| 1959 | 3,162 |
| 1960 | 558 |
| 1961 | 6,138 |
| 1962 | 6,510 |
| Total | 22,692 |

After adjustments were made both for pre-draw and for effect on head, the Staff estimated energy gains, as adjusted, for the period August 1955 through 1962, as follows:

TABULATION 5.—*Adjusted energy gains*[17]

| *Year* | *Amount (1,000 kwh)* |
|---|---|
| 1955 | 42,841 |
| 1956 | 1,362 |
| 1957 | 52,569 |
| 1958 | 72,491 |
| 1959 | 23,660 |
| 1960 | 84,557 |
| 1961 | 38,310 |
| 1962 | 71,104 |
| Total | 386,894 |

*Value of Energy Gains.* It is elementary that if there were no increased generation or energy gains at Roanoke Rapids resulting from the flows from the Philpott and Kerr reservoirs, and if Vepco needed a similar amount of energy, it would be required to obtain equivalent energy from an alternate source, most likely one of its steam electric plants. The net monetary value of the energy gains at Roanoke Rapids, therefore, in the judgment of the Staff is the difference between the higher incremental cost of producing steam electric energy and the lesser incremental cost of generating energy at the Roanoke Rapids hydroelectric plant. The Staff determined that Vepco's most likely alternative source of energy near Roanoke Rapids, was its Chesterfield Plant and, accordingly, this plant was selected on which to base alternative costs.

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[16] Staff witness Jennings explained that when actual regulated inflow to Roanoke Rapids equaled or exceeded 20,000 dsf as high-flow days, the records showed that the average net head at Roanoke Rapids for the total number of such days was 71.8 feet. During all other periods between August 1, 1955 and October 18, 1962, the net head averaged 77.5 feet. Thus, we concluded that on the average, when in-flow equals or exceeds 20,000 dsf, the net head is 5.7 feet less than the average net head occuring at other times. The average flow through the turbines during high-flow days was found to be 19,631 cfs and the reported overall plant efficiency average 81.6 percent. Thus, with this flow and efficiency, the average loss in generation due to a reduction of 5.7 feet in head was about 186 megawatt-hours a day. We inspected the 18 high-flow periods under regulation and found that there were 107 days when flows equaled or exceeded 20,000 dsf. We then inspected the records and found that there would have been 229 such days in the 49 high-flow periods with natural flow conditions, a total of 122 additional days. We multiplied the average loss, 186 megawatt-hours a day, by the number of additional high-flow days, 122, to obtain 22,692 megawatt-hours. (Tr. 52.)

[17] The adjusted energy gains consist of the basic energy gains plus those from improved head, less the energy savings from pre-drawing. (The kwh in Tabulation 2, plus those in Tabulation 4, minus those in Tabulation 3, equals the kwh in Tabulation 5.)

After determining the unit incremental costs of producing electric energy at Chesterfield and at Roanoke Rapids, the Staff then subtracted the Roanoke costs from those at Chesterfield to obtain the unit value of the energy gains. (Tabulation 6) The energy gains in kilowatts at Roanoke Rapids (Tabulation 5) were then multiplied by the unit value (the fourth column of Tabulation 6, below) to get the net value of the energy gains by year for the period as shown in Tabulation 7. More detailed figures are contained in Table 10, Appendix 1.

TABULATION 6.—*Unit value of energy gains*

| Year | Unit incremental costs (mills/kwh) | | Unit value (mills/kwh) |
|---|---|---|---|
| | Chesterfield | Roanoke Rapids | |
| 1955 | 3.232 | 0.068 | 3.164 |
| 1956 | 3.453 | .120 | 3.333 |
| 1957 | 3.683 | .130 | 3.553 |
| 1958 | 3.639 | .128 | 3.511 |
| 1959 | 3.519 | .117 | 3.402 |
| 1960 | 3.078 | .148 | 2.930 |
| 1961 | 2.952 | .136 | 2.816 |
| 1962 | 3.111 | .106 | 3.005 |

TABULATION 7.—*Net value of energy gains*

| Year | (mkwh) | Net value |
|---|---|---|
| 1955 | (42,841×3.164) | $135,549 |
| 1956 | (1,362×3.333) | 4,540 |
| 1957 | (52,569×3.553) | 186,778 |
| 1958 | (72,491×3.511) | 254,516 |
| 1959 | (23,660×3.402) | 80,491 |
| 1960 | (84,557×2.930) | 247,752 |
| 1961 | (38,310×2.816) | 107,881 |
| 1962 | (71,104×3.005) | 213,668 |
| Total | | 1,231,175 |

Reference has already been made to the capital costs of joint-use facilities allocated to power in finding the Section 10(f) costs of Philpott and Kerr to be borne by power. (Table 3). In Table 11 the Staff compiled a summation of the total capital costs on the Philpott and Kerr projects from August 1, 1955 through December 31, 1962. This table included year amounts for the capital costs of joint-use facilities allocated to power, the Section 10(f) costs (interest, maintenance, and depreciation), insurance costs, interim replacement costs, and operation costs. As shown in Tabulation 7 above, the Staff found a total net value of energy gains in the amount of $1,231,175. (Ex. 1-A, p. 17; Table 10; Tr. 55) Following this determination, the Staff made an apportionment of joint-use annual costs to the Roanoke Rapids plant to secure the proposed payments to the United States. The apportionment or assessment occasioned by the headwater benefits (Section 10(f) costs to Roanoke Rapids) was calculated as explained by the

Staff in the following fashion: The net monetary value of energy gains at Roanoke Rapids was added to the Vepco apportioned annual costs of joint-use facilities allocated to power at Philpott and Kerr to obtain the total monetary value of energy gains which the staff says is attributable to the headwater improvements. The foregoing was calculated on a yearly basis. For each year the net monetary value of energy gains at Roanoke Rapids was divided by the total monetary value of energy gains to obtain the ratio of gains at Roanoke Rapids to the total gains. The Section 10(f) costs to be borne by power for each year were then multiplied by the yearly ratios to obtain the portion of Section 10(f) costs for each year chargeable to Roanoke Rapids. (Table 12) The annual costs, August 1, 1955 through December 31, 1962, totaled $987,200; from this sum was deducted $3,900 to account for an adjustment for benefits to the small plants below Philpott, leaving a proposed payment to the United States by the Virginia Electric & Power Company in the total amount of $983,300. (Table 12).

One of the other factors considered by the Staff in determining the headwater benefits to Vepco is that of dependable capacity gains. The "Dependable Capacity" of a generating plant is the "load-carrying ability for the time interval and period specified when related to the characteristics of the load to be supplied". Dependable capacity expressed in more simple language involves determining the maximum capability of a plant that can be depended upon to supply the required load under the most adverse flow conditions of record. The Staff's witness Hay testified at the outset of the hearing that the Staff's studies showed no dependable capacity gains at Roanoke Rapids during the period here involved. (Tr. 28; see also Ex. 1-A, pp. 12, 13.) At the same time he testified that by reason of information furnished by the Department of the Interior, the Staff had requested Vepco to furnish a performance curve for the entire range of operation of the Roanoke Rapids plant and the company's tailwater curve, and indicated that a restudy was then being made which might result in increasing the Staff's previous benefit assessment. (Tr. 28.)

Before the hearing was concluded the Staff reworked its assessment to include an addition representing dependable capacity gains. (Tr. 354, Staff Brief, pp. 48–52.) Staff witness Fishburne testified that in 1953, when the construction of Roanoke Rapids was begun, the annual value to Vepco of a kilowatt of capacity was $23.50. (Tr. 363–364; 91, 190.) This figure was derived from the cost of an alternative steam generating-facility in the market area to be served by the Kerr development, including Vepco's electric system. The Staff concluded that the value of the dependable capacity gain should be fixed as of the date of the construction of Roanoke Rapids, based on the assumption that if Roanoke Rapids had not been built, Vepco would have had to install an alternative facility. The staff further concluded that it is the cost of such a facility, and not of any facility which might have been installed before or after, which should be taken as a measure of the value of power. The Staff also concluded that there was a dependable capacity gain at Roanoke Rapids of 14,000 kilowatts.[18] This figure was then multiplied by $23.50 to secure the annual value of the gain for dependable capacity in dollars, namely $329,000. This sum was prorated to $91,714 for the partial year 1955.

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[18] Tr. 444, 449; Ex. 66; Staff Brief 47; Staff Reply Brief 6. For the year 1958 Vepco reported a net plant capability under the most probable operating conditions of 108,000 kw. See, F.P.C. Form 12, Schedule 14.

After the foregoing calculation the Staff added the predetermined yearly net value of energy gains (Tabulation 7) to the annual sums obtained for dependable capacity gains to obtain the total gains, as revealed below:

TABULATION 8.—*Monetary value of energy and power gains at Roanoke Rapids*

| Year | | Amount |
|---|---|---|
| 1955 | $135, 549+$91, 714 | $227, 263 |
| 1956 | 4, 540+329, 000 | 333, 540 |
| 1957 | 186, 778+329, 000 | 515, 778 |
| 1958 | 254, 516+329, 000 | 583, 516 |
| 1959 | 80, 491+329, 000 | 409, 491 |
| 1960 | 247, 752+329, 000 | 576, 752 |
| 1961 | 107, 881+329, 000 | 436, 881 |
| 1962 | 213, 668+329, 000 | 542, 668 |
| Total | | 3, 625, 889 |

In order to arrive at its assessment to account for the increase due to capacity gains, the Staff followed the same procedure as related heretofore in arriving at the energy gains. The monetary value of both the energy and power gains at Roanoke Rapids (shown in Tabulation 8 above) were added to the total annual costs of joint-use facilities allocated to power: (Table 11)

TABULATION 9.—*Total value of energy and power*

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| 1955 | $227, 263+ | $748, 172= | $975, 435 |
| 1956 | 333, 540+ | 1, 797, 406= | 2, 130, 946 |
| 1957 | 515, 778+ | 1, 845, 376= | 2, 361, 154 |
| 1958 | 583, 516+ | 1, 846, 489= | 2, 430, 005 |
| 1959 | 409, 491+ | 1, 880, 469= | 2, 289, 960 |
| 1960 | 576, 752+ | 1, 929, 182= | 2, 505, 934 |
| 1961 | 436, 881+ | 1, 926, 323= | 2, 363, 204 |
| 1962 | 542, 668+ | 1, 888, 607= | 2, 431, 275 |
| Total | | | 17, 487, 913 |

The value of the energy and power gains at Roanoke Rapids (column 2, below) was then divided by the total value of energy and power of the Philpott and Kerr plants to obtain the ratio of value of gains at Roanoke Rapids. This is shown in the following tabulation:

TABULATION 10.—*Percent of energy and power value realized at Roanoke Rapids*

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| 1955 | $227, 263÷ | $975, 435= | 23. 299 percent |
| 1956 | 333, 540÷ | 2, 130, 946= | 15. 652 " |
| 1957 | 515, 778÷ | 2, 361, 154= | 21. 844 " |
| 1958 | 583, 516÷ | 2, 430, 005= | 24. 013 " |
| 1959 | 409, 491÷ | 2, 289, 961= | 17. 882 " |
| 1960 | 576, 752÷ | 2, 505, 934= | 23. 015 " |
| 1961 | 436, 881÷ | 2, 363, 204= | 18. 487 " |
| 1962 | 542, 668÷ | 2, 431, 275= | 22. 320 " |

To secure the portion of annual dam and reservoir costs of interest, depreciation, and maintenance (10(f) costs) of the headwater improvements to be borne by Vepco as owner of Roanoke Rapids for each year, the Staff multiplied the total 10(f) costs to be borne by power (Tabulation 1) by the percent for each year as shown in Tabulation 11:

TABULATION 11.—*10(f) costs apportioned to Roanoke Rapids*

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| 1955 | $676, 582× | 23. 299= | $157, 600 |
| 1956 | 1, 622, 827× | 15. 652= | 254, 000 |
| 1957 | 1, 664, 722× | 21. 844= | 363, 600 |
| 1958 | 1, 657, 733× | 24. 013= | 398, 100 |
| 1959 | 1, 665, 381× | 17. 882= | 297, 800 |
| 1960 | 1, 708, 611× | 23. 015= | 393, 200 |
| 1961 | 1, 702, 858× | 18. 487= | 314, 800 |
| 1962 | 1, 695, 404× | 22. 320= | 378, 400 |
| Total | | | 2, 557, 500 |

The Staff considered that if the headwater improvements had provided any benefits to the four small downstream plants, the apportionment to Roanoke Rapids would be reduced. Accordingly, an estimate was made of what the benefits might have been and what effect they could have had on the apportionment. As a result of this estimate, the 10(f) costs which the Staff apportioned to Roanoke Rapids were reduced by $10,200. By subtracting this sum, the total 10(f) costs were reduced from $2,557,500 to $2,547,300. The latter sum is the Staff's determination of proposed payment to the United States for headwater benefits for the period August 1, 1955 through December 31, 1962.

*Vepco's Case.* The basic formula or method of determining the headwater benefits payment used by the Staff in this proceeding (*supra*, p. 358) is agreed to by both Vepco and by the Interior (Vepco Brief p. 30; Interior p. 74). The results reached by the parties, however, are highly divergent. Accordingly, it should be noted that the amount of the Staff's recommended payment (excluding the cost of making the assessment is $2,547,300 and the Interior's recommendation is $4,155,000). (Staff Brief p. 51, 59; Interior Brief p. 80.) At the hearing, however, the Staff recommended a payment of $2,061,800. (Tr. 363, Ex. 62) Interior also recommended an alternative payment of $2,799,600. Vepco, on the other hand, claims that the Staff and the Interior erred in their presentations and says that there are equitable considerations involved in determining a payment, and thus, by a rather strange process of logic, reaches the conclusion that no payment whatsoever is due the United States for headwater benefits under Section 10(f) of the Act for the period August 1, 1955 through December 31, 1962 (Vepco Brief 5, 38–39). This conclusion is without foundation and is rejected.

It is agreed by the parties that the energy gains at Roanoke Rapids due to Philpott and Kerr are equal to the difference between the actual energy output at Roanoke Rapids with Philpott and Kerr (regulated river), and the computed energy output at Roanoke Rapids, assuming Philpott and Kerr had not been constructed (Tr. 250).

*High Flow Periods.* Vepco's first disagreement relates to the Staff's method of determining energy benefits during high-flow periods. Vepco claims that the Staff erroneously assumes that it would utilize the storage capacity at Roanoke Rapids, if there were no other project on the river, in exactly the same manner as it does with the hydraulic regulation afforded by the existing projects.

It is true, as Vepco says, that in a hydro plant the greatest possible proportion of flow shall be used for the production of energy and the smallest possible proportion shall be allowed to pass downstream unused, that is, to be spilled.[19] But Vepco says the Staff assumes that the operating pattern of storage facilities at Roanoke Rapids would have been identical under regulated conditions as under unregulated, and then concludes that the Staff's assessment is overstated.[20] In the illustration given by Vepco, it follows that the Staff's formula cannot be used for one purpose and abandoned for another.

It is manifest that, when there is no room for additional storage at Roanoke Rapids on the unregulated river and when the inflow exceeds that of the generating capacity, there must be a spill. On the other hand, when the flow is low and the storage is limited the generation must be limited accordingly. On the regulated river the generation may be increased over a time period by the upstream impoundment. Even if Vepco's illustrations were applicable in isolation, they do not disprove the validity of the Staff's method. Although it is not readily demonstrable, it must follow as the night follows the day, that after a high flow period the Roanoke reservoir would not be the same without the headwater improvements as it is with them.[21] Based on the evidence of record Vepco's claim for a reduction in energy gains to account for high-flow periods is held to be invalid.

*Pre-Draw.* Vepco next claims that the Staff's energy gains are subject to reduction on another account, namely, for pre-draw. The theory advanced in justification is as follows. It is standard practice in the industry to keep systematic watch for increased flows that might, if not utilized, be wasted by spill. Accordingly, when the Roanoke Rapids plant has notice of increased river flow (caused by heavy rains, etc.) it is possible to calculate a flow forecast of water already on the ground or in the river based on observed data or past experience and then to pre-draw on the reservoir so that when the high flows arrive in excess of turbine capacity they are used to refill the reservoir, thereby avoiding spillage and conserving the maximum amount of water for energy generation. Vepco claims that this practice is followed in other river basins. With this in mind, one of Vepco's witnesses made a study of an information service and an operating pattern so as to provide an efficient pre-draw system at Roanoke Rapids.

The witness' conclusion, based on observed volume of river flow, known travel time, and experience of neighboring hydro companies, was that, "inflows which would exceed the turbine capacity of 20,000 dsf could usually be predicted more than two days in advance of their arrival at Roanoke Rapids". (Tr. 262.) The witness testified that the annual cost of this information service, including all carrying charges, maintenance and operating costs, would be about $12,500 annually.

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[19] It has facetiously been said—and with some truth—that every tin cup of water contributes to generation and, thus has a monetary value.

[20] Vepco states for an example in its brief that "On March 17, 1956, the turbine discharge [at Roanoke Rapids] was only 4497 dsf and the minimum releases required by the License for downstream needs was an additional 229 dsf. Since the inflow to Roanoke Rapids on that day was 10,356 dsf [released by Kerr], the Company was able to add 5630 dsf to storage. This left additional storage space for 2165 dsf, available but unused (Ex. 24). In contrast, on the unregulated stream, the total inflow to Roanoke Rapids would have been 34,935 dsf, storage space would have been completely utilized by adding 7795 dsf (5630 plus 2165) and a further amount of 7140 dsf would have been spilled (Ex. 24). This is simple mathematics and obvious operating practices. But the Staff's method assumes that on the unregulated stream, the Company would have stored only that same amount of 5630 dsf that it actually stored on the regulated stream and would have spilled the entire remainder of 9305 dsf instead of the mathematical remainder of 7140 dsf (Tr. 258). Undeniably, the Company would have placed the difference of 2165 dsf in the available storage space rather than needlessly wasting it down-stream by spilling."

[21] It is clear that in a high-flow period of several days, water added to or retained in storage at Roanoke Rapids on the first day would require a spillage of an equivalent amount during succeeding days.

Vepco asserts that the energy gains as determined by the Staff should be reduced in an aggregate amount of 80,698 megawatt-hours to account for an overstatement of energy gains relating to high-flow periods and to pre-draw covering the entire period between August 1, 1955 through December 31, 1962. It should be noted in passing that the reduction in the Staff's energy gains in megawatt hours to account for the factors of high-flow and pre-draw alone asserted by Vepco amount to approximately 20.86 percent of the Staff's entire determination of energy gains.

Insofar as the above pre-draw practice is concerned, asserted by Vepco as a basis for its claimed reduction in energy gains, the practice is essentially no different than that of the old grist miller, merely one of degree. He, too, in his day engaged in pre-draw. Normally, he was able to grind only an hour or two a day, relying upon the natural flow of the stream. But when the rains came, he pre-drew on his storage insofar as he was able, filled his reservoir, and then ground night and day with the high-flows. But, since his reservoir usually was limited, an hour inevitably arrived when excessive spillage occurred. If he engaged in pre-draw prematurely or misjudged the rainfall and stream flow, he was forced to cease grinding until a build-up occurred in the reservoir based on more normal flows.

Although Vepco presented considerable evidence as to distances (in river miles), flow time, the percentage of area drained by the Roanoke River and its tributaries, including data on collection and analysis of information relating to stream flow, this evidence provides no real proof for a reliable prediction of inflows at Roanoke River two days or more in advance. Mr. Ragone's testimony in part at least was speculative.[23] (Tr. 515, 522, 523, 527, 530, 555.) Mr. Rucker for the Interior testified in opposition and to the effect that every time the reservoir is drawn down and approaches the assumed minimum pre-draw elevations either the minimum elevation to which the reservoir is drawn is erroneous, or the turbine discharge is overstated on the following day and spill is subsequently overstated. He indicated that these errors in the Vepco study result from a failure to consider when the instantaneous inflow into Roanoke Rapids exceeds 20,000 cfs. He testified that each time Vepco in its study, draws its reservoir down from elevation 132.7, the study shows less spill than actually occurred regardless of when the instantaneous flows returned to the 20,000 cfs level, except when the flows returned to exactly 20,000 cfs at the stroke of midnight. He concluded that these errors result in an understatement of the total water spilled and an understatement of the energy gains. (Tr. 1047, 1048.)

Mr. Ragone's testimony was also disputed by the Witness Midkiff, who was particularly qualified to testify in respect to stream flow forecasting. He stated that an estimation of the value of flood flow is made by evaluating the rainfall losses, subtracting this from the total rainfall and converting the remainder to day-second-feet, or acre-feet of water. He indicated that forecasts resulting from a storm may exceed actual inflow by as much as 100 percent, or inflows may exceed forecasts by as much as 100 percent. He also indicated that weather forecasting is of little or no value in forecasting flows and that it is not possible to forecast flows in excess of 20,000 cfs into the Roanoke Rapids pond 48 hours in advance based on any flood conditions in the Roanoke Basin. He concluded that the average pre-draw period is ten hours, that the average pre-draw period is not meaningful in that each high-flow period must be analyzed, and that Vepco has shown pre-draw starting prior to any indication of a need to pre-draw. It was his opinion that Mr. Ragone's assumptions of a 48-hour pre-draw period and 100 percent accuracy in recognizing the need of pre-draw was unrealistic in actual operation.

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[23] As indicated above (p. 357), the two chief factors affecting generation in a hydro plant periods other than the 1940 flood which showed specifically that flow in excess of 20,000 cfs at Roanoke Rapids could be predicted two days in advance?" He answered, "No review of actual river flows on flood conditions other than glancing at this one." (Tr. 510.) He also stated, "It would be ideal if you could afford the time and effort to study this entire system, Roanoke Rapids, on the unregulated river on the hour-by-hour, day-by-day, hind sight operation." (Tr. 500.)

Admittedly, measurements may be made of the stream flow at various points upstream from Roanoke Rapids and calculations may be made of the stream flow at various intermediate points, taking into account flow time and other factors. Necessarily, studies of energy gains on such facts are highly specialized and complicated. Heavy rains may at times, but not always, fall in one small area only, as for example, in the upper Roanoke River Basin and not at Roanoke Rapids or somewhere in between. Nor do the rains descend at convenient hours during the night as opposed to the day, so as to permit easy accurate measurement and reporting, and momentary action as to draw-down based thereon. Indeed, it is not unlikely that when there are rains of a flood character in the upper river basin, there are similar rains at Roanoke Rapids and there is a runoff on the entire river, thus thwarting a practical inexpensive pre-draw system as claimed by Vepco. We conclude that Vepco could not diminish the energy gains on the unregulated river by pre-draw to the extent claimed.

*Net Head.* Vepco's second major disagreement with the Staff's energy gain determination relates to the head benefits conferred by the upstream projects on Roanoke Rapids. Vepco asserts that the upstream projects provide no net head[23] improvements at Roanoke Rapids, hence no energy gains. Normally, flows into the reservoir tend to raise the water level and to increase the gross head, whereas turbine discharges tend to raise the tailrace and thus to reduce the gross head. The Staff found a net head benefit during high-flow periods of 22,692 mwh. Vepco claims that the Staff analyzed too few high-flow days, that days where inflow was between 18,000 and 20,000 dsf should have been analyzed as well as where the flow equaled or exceeded 20,000 dsf. Vepco says that there were 34 more days where the inflow was greater than 18,000 dsf ("high flow days") under unregulated conditions rather than 122 as found by the Staff and that the energy benefits would be only 6222 mwh rather than 22,692 (Tr. 275). Vepco claims that on all remaining days when there was an inflow of less than 18,000 dsf the reduction in the number of extremely high-flow days due to regulation increased the average flow on other days and thus decreased the average net head by about $\frac{3}{10}$ths of a foot per day. Vepco argues this resulted in an energy detriment of about 9000 mwh. By offsetting the 6222 mwh gains against the 9000 mwh detriment, Vepco finds that there was no resulting energy gains but, in fact, a detriment of 2778 mwh. Vepco contends that, since its study is based on more high-flow days than the Staff's, it is to be preferred as more reliable.

But the Staff considered all days during the study period and then divided the high-flow days from the remainder. The division by the high-flow days was then related to the turbine capacity of the Roanoke Rapids turbine, that is, 20,000 cfs.

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[23] As indicated above (p. 357), the two chief factors affecting generation in a hydro plant are the volume of water and its fall. Head is the distance between the pond level and the discharge level. The "gross head" is defined as the difference between water surfaces of the forebay and tailrace under specified conditions. "Net head" is defined as "the gross head less all hydraulic losses except those chargeable to the turbine."

Staff witness Jennings testified that the Staff analyzed all high-flow days where actual regulation inflow to Roanoke Rapids equaled or exceeded 20,000 cfs (Tr. 51). In view of the turbine capacity this is the dividing point, and the difference in head that is being determined here is the head reduction due to the spill of water which comes over with discharges in excess of 20,000 cfs. Vepco argues that the Staff's claim of a benefit in the amount of 22,692 mwh is completely unrealistic and that no energy gain at all resulted from changes in net head due to regulation. This contention centers around analyses made of the periods of high flow. It is apparent that without Philpott and Kerr the flow of the river would be more uneven. Conversely with Philpott and Kerr it would be more steady. The number of periods of high flow will depend on the basis for determining high flow. But aside from methodology it must follow that the net head is improved by regulation—more even flow—and in turn provides energy gains. Vepco's contention that there were no energy gains resulting from net head is unpersuasive.

*Effect of Gaston.* The Gaston hydroelectric development, owned by Vepco, is licensed by the Commission as a part of Roanoke Rapids Project No. 2009. As stated above, the Gaston Dam is located above Roanoke Rapids and some 34 miles downstream from the Kerr Dam. Construction on Gaston was begun in the spring of 1960, and the generating plant began commercial operation on February 1, 1963. Gaston enters into a determination of the Roanoke Rapids energy gains by reason of the fact that the Gaston Dam was closed for filling on October 13, 1962, and the remainder of the year 1962 is part of the period we are concerned with in this proceeding in determining headwater benefits, namely, August 1, 1955 through December 31, 1962.

Vepco says that the Staff's method of determining energy gains, by reason of the incidence of Gaston, is erroneous in that it results in extra spill at Roanoke Rapids under unregulated conditions. Accordingly, Vepco contends that the Staff's determination contains an overstatement of energy gains of 9757 mwh which is some 2.5 percent of the Staff's entire determination. Vepco asserts that Gaston and Roanoke Rapids are one in law and in fact, and that on the unregulated river all flows in excess of those required for generation at Roanoke Rapids or for minimum releases would have been stored at Gaston in order to fill the reservoir so long as storage was available. The Staff answers, and the Interior agrees, that since Gaston and Roanoke Rapids are both owned by Vepco, all releases from Philpott and Kerr storage during the period of filling the Gaston reservoir are benefits so long as spills did not occur, because Vepco had the choice of using the releases either for generating energy at Roanoke Rapids or for filling Gaston. It is apparent that if flows are not so considered, Vepco can have it both ways. Vepco's argument is the same as "having your cake and eating it too". If Gaston provides or has an effect on headwater benefits, and it is not intimated that it does not, Gaston's effect should be measured from February 1, 1963, when it began commercial operation. We conclude that Vepco's alleged error on the part of the Staff is not well taken.

*Capacity Gains.* The headwater determination made by the Staff is based upon increased generation at Roanoke Rapids due to the upstream improvements. One of the factors said to be involved in the increased generation is identified as capacity gains. Both the Staff and the Interior contend that there are capacity gains at Roanoke Rapids by reason of the existence of Philpott and Kerr (*supra*, pp. 364, 365). This contention, it is said, is supported by the inherent nature of the facilities, that the regulated river provides greater dependability at Roanoke Rapids than the unregulated river. Vepco contends on the other hand that the headwater improvements provide no capacity gains. In support of its contention Vepco says (Vepco Brief, p. 22):

> Roanoke Rapids is limited by machine capability to 104,000 kw. When the stream flow exceeds 60,000 cfs, elevation of the water level in the tailrace tends to reduce capability. At the maximum flood in all history of 261,000 cfs in 1940, the plant capability is only 63,700 kw (Ex. 56). But such floods, particularly during the summer months when the peak load is experienced, are not likely to occur except at long intervals of time. Moreover, their duration is obviously brief, a matter of a few days, for instance, in comparison with several weeks that might well be involved in an emergency outage of either hydro or steam generating facilities * * *"

Vepco quotes from the Commission's Form 12 that "net plant capability, as reported in column 10, should be the maximum load-carrying capacity normally available at time of system peak (station use deducted) for a period of one year", and further, in respect to hydro units, that, "where stream-flow records indicate that the most adverse flows are not likely to occur except at long intervals of time and are likely to be of very short duration, the figures used in determining the capacity and energy available from hydro plants may be modified, treating such abnormal limitations as emergency conditions to be covered by the reserve capacity".

Vepco's argument is that its system steam reserves make up capability losses during flood flows and that even if the Roanoke Rapids plant was reduced to zero by flood on the natural river during system peak loads, it would have replaced the lost capacity from system steam reserves or through purchases from neighboring utility companies. We are of the opinion that the Commission's definition can hardly be interpreted to support Vepco's contention but rather supports the Staff and the Interior that Vepco secured dependable capacity due to Philpott and Kerr. Moreover, steam power or power from another system is not relevant in the determination of dependable capacity at a particular hydro plant. Any dependable capacity in generation gained on the system at one place relieves the capacity having to be installed at another. This is the import of capacity gains of this character.

Vepco says that "the dependable capacity of Roanoke Rapids is the same for both regulated and unregulated conditions." An argument advanced in support of this contention is that floods decrease the plant capacity (tailrace backup, etc.) and heavy rains and flood periods decrease the load. Vepco points to the fact that at such times floods adversely affect its system industrial load, that changes in the weather are related to such periods, and that recent heavy seasonal loads resulting from air-conditioning are reduced. Vepco says severe floods on the unregulated river would cause a reduction in the electric loads of industries immediately downstream from Roanoke Rapids by forcing them to cease or curtail operations, and that these reductions alone would be greater than any decrease in plant capability resulting from the same flood flows. Although these arguments have some merit they fall far short of establishing that the dependable gains are the same both on the regulated and on the unregulated river.

It is only to be expected that with the increased use and demand for electric energy, Vepco's reserve capacity should increase. Vepco's reserves should be more than enough to back up any short-term impairment of plant capacity at Roanoke Rapids during any occasional high flow that might occur on the unregulated river during the period of annual system peak loads. It is also to be expected that Vepco would, whenever possible, schedule maintenance and repair outages during months of traditional low flow. This is simply in accord with normal practice.

But from what has been said there is no sound basis for concluding that there are no capacity benefits at Roanoke Rapids under regulated conditions.

*Plant Capability.* The estimates of the witnesses varied considerably in respect to the gains in plant capability at Roanoke Rapids. The differences result primarily from the data selected for consideration and the different assumptions that were made. Staff witness Fishburne testified that the gain in Roanoke Rapids' plant capacity was the difference between 94 megawatts on the unregulated river and 103 megawatts on the regulated river, or 9 megawatts. He selected a flood of 100,000 cubic feet per second as having a probability of recurrence which would impair dependable capacity. To arrive at a figure for the unregulated river he used the turbine manufacturer's model test data. He assumed a plant efficiency of 87.5 percent and his estimate was based on gross rather than net head. The witness accepted Vepco's representation of plant capability on the regulated river which was presented in FPC Form 12, Schedule 4, since 1959 that Roanoke Rapids' plant capability is limited by cavitation at 103 megawatts. He determined that Kerr would control the greatest flood of record, let alone the selected flood, to avoid impairment of the reported plant capability. Vepco's witness Gunwaldsen testified to a plant capability gain of 9 megawatts. Witnesses for the Interior contended, among other things, that if the Staff witness Fishburne had utilized net head rather than gross head his estimate of plant capability would have been 12 megawatts. In its brief, the Staff proposed a finding of 14 megawatts, and under certain other conditions findings of 16, 17, and 18 megawatts. Interior's witness Rucker testified to an estimate of 35 megawatts.

Although Vepco concurs with the Staff that the difference in the plant capability on the regulated and the unregulated river during high flow conditions is 9 or 10 megawatts, it contends that this is not the measure of dependable capacity benefits. Vepco also contends that "the difference between minimum plant capability under regulated conditions (100 megawatts) and minimum plant capability under postulated unregulated conditions (94 megawatts as determined by both the Company and the Staff) is accordingly only 6 megawatts". It then concludes that the difference in plant capability under regulated and unregulated conditions is not detrimental to its operations because (1) of adequate reserves, or (2) reduced loads that accompany flood conditions, hence, there is no gain in dependable capacity for which payment should be made. We hold that this conclusion runs counter to the statute and must be rejected in the light of the evidence.

In its brief, Vepco dealt with the Staff's proposed payment as presented at the hearing. The payment recommended by the Staff in its Second Report, revised April 30, 1965, was $983,300 and contained no payment to account for dependable capacity gains. (Table 12; Exh. 1–A, pp. 12, 13, 32.) At the hearing the Staff recommended a payment of $2,061,800. (Exh. 62, revised July 1, 1965; Appendix II.) However, as heretofore noted, the Staff's brief contained a recommended payment of $2,547,300. In its brief, Vepco refers to the assessment of $2,061,800 and says that the difference, *i.e.* $1,078,500 ($2,061,800 minus $983,300), representing the capacity gains as presented by the Staff at the hearing should be eliminated as unsupportable. In its reply brief, Vepco complains that the Staff changed its position from that taken at the hearing. This change in the amount of the Staff's proposed assessment is noted. It is also noted that notwithstanding this change (represented by an increase in capacity gains from 9 to 14 megawatts), Vepco in its reply brief reaches the same anomalous result—that there were no capacity gains whatsoever at Roanoke Rapids on the regulated river.

*Measurement of Costs.* Vepco next complains that the Staff's measure of costs is bad, as related to the upstream projects (at-site, in the language of the formula). Vepco says it concurs with the Staff that the starting point is a separation of the so-called "specific facilities" and the "joint-use facilities", and that "specific power facilities are of value to the at-site plants only, whereas joint-use facilities provide benefits for both at-site and downstream." (Ex. 1–A, p. 16.) The reason given by the Staff, to which Vepco agrees, is that the specific facilities do not contribute to stream flow pool regulation and therefore do not provide benefits to the downstream development, whereas joint-use facilities provide benefits to both the at-site and downstream power plants. By "specific facilities" are meant principally the powerhouse, turbines, and generators at the headwater improvements. But Vepco contends that the specific facilities are not so limited in character but include in addition "a dam up to the head that is necessary to produce the dependable capacity" for which the turbine and generator are designed and supporting facilities (reservoirs) sufficient to impound the "dead storage" site. It is argued that the turbine would not operate without the dead storage, that dead storage is never made available to downstream projects, that the supporting facilities are just as much a part of the specific at-site facilities as the turbine itself, and that neither has any possible value at any downstream project. Accordingly, Vepco concludes that adjustment should be made to transfer the capital investment in this portion of the dam and reservoir to the specific facilities.

Although this argument appears plausible at first sight, it is in fact invalid. It may be true that dead storage facilities at the headwater dams have no value to the downstream project, but it follows then by the same token they have no value to the headwater dams. But for their existence the at-site facilities are incomplete and useless. Their significance lies in their association with other facilities. The dead storage facilities are integral to impoundment. Vepco is not charged for the entire cost of these facilities. The costs charged are implicit in the allocation formula. Vepco's contention, therefore, is regarded as untenable and without merit.

We have considered the numerous arguments advanced by Vepco relative to capacity gains and the value thereof, mostly of a negative rather than of a positive nature. Under the circumstances it is necessary to consider these arguments in detail. We hold that the evidence of record clearly establishes that there are substantial capacity gains and that this conclusion has a reasonable basis in fact. Vepco's contention that there are no gains of dependable capacity for which payment should be made is therefore rejected. The grounds for our finding in support of specific gains and, in turn, of an assessment will be considered hereafter.

*Offsetting Benefits by Roanoke Rapids.* As a final argument, Vepco claims that Roanoke Rapids contributes benefits to the Kerr Project. Vepco says that upon the filling of the Roanoke Rapids reservoir in July 1955, Roanoke Rapids started making the minimum off-peak releases theretofore made by Kerr and which were required by the Public Health Service for pollution abatement and low water regulation. Vepco says that Roanoke Rapids relieved Kerr of its minimum release obligations and that in so doing, Kerr was enabled to utilize water for the production of firm energy which had formerly been released in off-peak hours. Vepco says that this increase in firm energy immediately resulted in an increase of 9,900 kw in the dependable capacity of Kerr. Vepco claims that at the contract rate for Kerr dependable capacity, namely $10.80 per kw-year, Interior realized annual revenues of sales—two-thirds of which were to Vepco—of $106,920 or a total incremental revenue during the period involved of $801,900.

At the hearing, the Examiner excluded the evidence in respect to Vepco's offsetting claim on the authority of *South Carolina Electric & Gas Company* v. *Federal Power Commission*, 338 F. 2d 898, 903 (CA4-1964). In its brief Vepco asks that "the ruling of the Examiner be reversed, the evidence be admitted of record and appropriate findings and conclusions be adopted to the effect that no further payment is due or proper on the part of the Company to the United States or any of its agencies under Section 10(f) as applied to Roanoke Rapids or its tributaries during the study period". Vepco says that it is not suggesting the possibility that Section 10(f) may authorize a money judgment by the owner of the downstream facility against United States for benefits conferred on its upstream project, and further that it is no attack on the doctrine of sovereign to suggest that it does not preclude the sovereign from doing equity—particularly where the sovereign by statute has in effect commanded that equity be done. Vepco asked that all the facts be given due weight in reaching a final conclusion of the whole controversy and says "surely it cannot be equitable to require duplicate payment for the same benefit". This argument to be sure is rather ingenuous. It admits as was stated by the Supreme Court in *Kawananahoa* v. *Polyblank*, 205 U.S. 349, 353 (1907) that the sovereign is exempt from suit on the logical and practical ground that there can be no legal right against the authority that makes the law on which the right depends, except by grant, and yet strongly hints that Section 10(f) provides some equitable basis for escaping the burdens which it in terms imposes.

We can perceive no sound reason for admitting the evidence which was excluded at the hearing. The license issued to Vepco for the construction of Roanoke Rapids required that these minimum releases be made and Vepco accepted the license, 10 FPC 1, 9, 19, 21 (1951). It follows therefore that Roanoke Rapids confers no offsetting benefits to Kerr which may be recognized in equity under Section 10(f) of the Federal Power Act. Accordingly, the sum claimed by Vepco as an offset must necessarily fall with this ruling.

## III

*Interior's Determination.* The case for the Interior has already been partly considered. In its presentation, the Interior explains at length the method of determining the energy gains and capacity gains at Roanoke Rapids and questions Vepco's contentions particularly in respect to costs.

Interior's witness Rucker was of the opinion that there were two factors which, had they been considered and evaluated by the Staff, would have increased the energy gains determined. He believed that both factors caused a higher operating head under regulated conditions. First, the necessity for draw down during the latter part of each week under natural conditions so as to store inflow over the weekend was reduced under regulated conditions and, secondly, knowledge of the river flow at Kerr (some 93 percent of the total flow into the Roanoke Rapids pond) permitted Vepco to operate at a higher pool elevation. Mr. Rucker estimated the increase in gains due to the first factor at approximately 7,000 megawatt hours, but did not evaluate the second. In rebuttal, he testified that he believed with the Staff that Vepco was not entitled to any pre-draw credit for energy gains.

Interior argues that had Staff witness Fishburne used net head in his Exhibit 56 as did the other witnesses, the dependable capacity gain at Roanoke Rapids would have been 11 mw rather than 9 mw. Also, it is argued that had Mr. Fishburne used an efficiency of 4 to 5 percent less than used in Exhibit 56, and a 1½ foot reduction in head for hydraulic losses, he would have found a dependable capacity gain at Roanoke Rapids due to Philpott and Kerr regulation of 16 mw.

In general the capability of a hydro plant at a given head is dependent on the maximum flow of water through the turbines and the overall plant efficiency for the particular head. At the hearing witnesses for the respective parties sponsored exhibits consisting of curves showing, among other things, the manufacturer's expected capability, and the actual operations capability of the Roanoke Rapids plant, input and output, and tailwater rating. The application of the respective curves and other assumptions necessarily affected the dependable capacity found by the parties and, in turn, the suggested assessments.

By using a gain of 35,000 kw and a value of $23.50, the cost to Vepco for obtaining power from alternative steam-electric plants under July 1954 cost levels as determined by the Staff and adopted by the Interior, the witness Wright calculated the net monetary value of the dependable gains at Roanoke Rapids to be $68,540 for 1955 (one-twelfth of annual amount) and $822,500 for each of the other years, 1956 through 1962. The Interior thus obtained a total value of $5,826,040. By using the alternatively determined gain of 17,000 kilowatts and a value of $23.50, the net monetary value is $33,290 for 1955 and $399,500 for each of the other years, 1956 through 1962. Thus, a total is reached for the period August 1, 1955 through December 31, 1962 of $2,829,790. (Ex. 16; Appendix III)

Interior adopted the Staff's formula for determining the annual headwater benefit assessments to be borne by Roanoke Rapids (Tr. 92). The value of power gains, as determined by the Interior, are shown in tabulations 12 and 13 below:

TABULATION No. 12.—*Based on 35,000 kw dependable capacity gain (ex. 16)*

| Year | Net value Energy gains | Net value dependable capacity gains | Total value power gains |
|---|---|---|---|
| 1955 | $135,549 | $68,540 | $204,089 |
| 1956 | 8,392 | 822,500 | 830,892 |
| 1957 | 187,804 | 822,500 | 1,010,304 |
| 1958 | 256,545 | 822,500 | 1,079,045 |
| 1959 | 85,407 | 822,500 | 907,907 |
| 1960 | 251,986 | 822,500 | 1,074,486 |
| 1961 | 114,392 | 822,500 | 936,892 |
| 1962 | 218,878 | 822,500 | 1,041,378 |

TABULATION No. 13.—*Based on 17,000 kw dependable capacity gain (ex. 16)*

| Year | Net value energy gains | Net value dependable capacity gains | Total value power gains |
|---|---|---|---|
| 1955 | $135,549 | $33,290 | $168,839 |
| 1956 | 8,392 | 399,500 | 407,892 |
| 1957 | 187,804 | 399,500 | 587,304 |
| 1958 | 256,545 | 399,500 | 656,045 |
| 1959 | 85,407 | 399,500 | 484,907 |
| 1960 | 251,986 | 399,500 | 651,486 |
| 1961 | 114,392 | 399,500 | 513,892 |
| 1962 | 218,878 | 399,500 | 618,378 |

When the Staff's formula is applied to the 35,000 kw and to the 17,000 kw of dependable capacity gains (ex. 16), the payments determined by the Interior are as follows:

TABULATION No. 14

| Year | 35,000 dependable capacity gains | 17,000 kw dependable capacity gains |
|---|---|---|
| 1955 | $145,000 | $124,600 |
| 1956 | 513,000 | 300,200 |
| 1957 | 589,000 | 401,900 |
| 1958 | 611,400 | 434,600 |
| 1959 | 542,300 | 341,400 |
| 1960 | 611,200 | 431,300 |
| 1961 | 557,200 | 358,600 |
| 1962 | 602,600 | 418,200 |
| Totals * | 4,155,000 | 2,799,600 |

* After adjustment for benefits to small plants below Philpott.

## IV

In determining the headwater benefits of any project the character of the dams, reservoirs, and improvements must necessarily be borne in mind. This is true in respect to the projects constructed at Philpott and Kerr as contrasted with those at Roanoke Rapids. The projects which were constructed at each site were dictated largely by nature and topography. The Roanoke Rapids site does not lend itself to a development such as Kerr but, aside from this, Kerr was in existence at the time Vepco built the Roanoke Rapids project so that there was no need for the construction of a project calling for a large impoundment with the incident cost, but rather for essentially a run-of-the-river project. Thus, when the storage capacities of the respective reservoirs are compared and the installed generating capacity is considered (as shown below), it is fatuous to contend that no benefits in the form of increased electric generation enure to Vepco by reason of the upstream projects.

DAM SITE STORAGE AND GENERATION CAPACITIES

| Project | Dead storage (in acre feet) | Storage reserved for flood control | Storage reserved for power | Total storage | Power installation (kw) |
|---|---|---|---|---|---|
| Philpott | 53,970 | 34,080 | 110,010 | 198,060 | 14,000 |
| Kerr | 443,500 | 1,278,060 | 1,028,789 | 2,750,349 | 204,000 |
| Total | 497,470 | 1,312,140 | 1,138,799 | 2,948,409 | 218,000 |
| Roanoke Rapids | [1] 37,640 | | | [2] 77,140 | 100,030 |

[1] Available between elevations 132 and 122 feet.
[2] At maximum power pool elevation of 132 feet.

Of course, it might be argued that if Vepco is required to pay substantially less than the maximum energy and power gains realized at Roanoke Rapids by reason of Philpott and Kerr, Vepco's stockholders would share in profits derived in part from improvements which in reality were paid for by the public and are publicly owned. On the other hand, it might also be argued that if Vepco is required to pay anything in excess of the maximum gains realized at Roanoke Rapids, the cost in the end may be passed on by Vepco to its consumers in the form of increased rates. The charges determined herein below, we believe, readily fall between these two extremes.

By the nature of this proceeding no precise measure of energy and power gains at Roanoke Rapids is possible, and no charges can be determined similar to valuations based on market as in an eminent domain proceeding. Any determination must necessarily depend on measurements of rainfall, stream flow, machinery efficiency, and upon mathematical calculations and assumptions with which the experts are not in entire agreement. A proper determination must however be based upon a fair and reasonable evaluation of the evidence. Many of the points raised by the witnesses and their counsel relate primarily to assumptions. Although all the points raised have been considered it is unnecessary to discuss them in detail. The finding made herein below, we believe, is clearly supportable by substantial evidence and by reliable testimony of the witnesses. Accordingly, after having given consideration to the entire record and the testimony of the witnesses for the Interior, witnesses for the Staff, and those of Vepco, we are of the opinion that the evidence fairly supports a payment by Vepco of annual charges determined in accordance with Section 10(f) of the Federal Power Act for the period August 1, 1955 to December 31, 1962, in the sum of $2,057,500, and that this sum is equitable and reasonable. It will be observed that this sum is based upon the energy gains set forth in Tabulations 5 and 7, and dependable capacity gains of 9000 mw. (Ex. 62, Appendix II)

*Cost of Determination.* Section 10(f) provides that licensees benefited by upstream improvements shall pay to the United States the cost of making such determination as fixed by the Commission. The costs incurred by the Federal Power Commission for the period 1955 to April 12, 1964, were determined by the Staff to be $33,900. (Ex. 1-A; p. 17; Tr. 1137) The additional costs incurred thereafter through July 23, 1965, were $10,086, making a total cost of $43,986. Counsel for the parties do not dispute this amount. (Vepco Reply Brief, p. 19) This sum appears to be reasonable and accordingly is adopted.

## FINDINGS AND CONCLUSIONS

Upon consideration of the record, the briefs, and arguments of counsel, it is found and concluded in addition to the findings and conclusions heretofore stated, that:

(1) The Roanoke Rapids project, Licensed Project No. 2009, is owned by the Virginia Electric & Power Company, a corporation authorized under the laws of the State of Virginia, with offices in Richmond, Virginia. (10 FPC 1, 18)

(2) The Roanoke Rapids project is located in North Carolina on the Roanoke River, a navigable water of the United States, and near the Virginia-North Carolina boundary line.

(3) The Roanoke River begins in the Allegheny Mountains and flows eastward in Virginia and empties into Albemarle Sound in North Carolina. Its principal tributaries, among others, are the Dan River and the Smith River.

(4) The United States Government owns and operates the Philpott project on the Smith River some 19 miles upstream from the City of Martinsville, and the John H. Kerr project on the Roanoke River some 20 miles downstream from Clarksville, Virginia. Both the Philpott and the Kerr projects are upstream from Roanoke Rapids. The headwater benefits provided by the Philpott development to the small non-federal plants (Martinsville, Spray, Schoolfield, and Riverside) were *de minimis* for the period February 1, 1951, when Philpott began controlling stream flow, through December 31, 1962.

(5) The Virginia Electric & Power Company is a licensee within the meaning of Section 10(f) of the Federal Power Act and as such is subject to the payment of an equitable portion of the annual charges for interest, maintenance, and depreciation on the upstream Philpott and John H. Kerr projects within the meaning of said section.

(6) The Virginia Electric & Power Company by reason of its ownership and operation of the Roanoke Rapids project is directly benefited by the construction

work of the United States at the Philpott and John H. Kerr projects. The Virginia Electric & Power Company benefited by the construction for the period August 1, 1955 through December 31, 1962.

(7) The Roanoke Rapids Basin is approximately 220 miles long, from 10 to 100 miles wide, and encompasses an area of approximately 9580 square miles.

(8) The combined storage of the Philpott and John H. Kerr reservoirs is approximately 2,948,409 acre feet. The storage of the Roanoke Rapids reservoir is approximately 77,140 acre feet.

(9) The combined nameplate rating of the power installations at the Philpott and John H. Kerr projects is 218,000 kilowatts. The nameplate rating of the power installations at the Roanoke Rapids project is 100,080 kilowatts.

(10) The Philpott project was constructed between 1948 and 1953. The total capital cost of the Philpott development was approximately $13,900,000. The capital cost was $13,873,065 for 1955; $13,889,591 for 1956; $13,914,730 for 1957 through 1960; $13,910,126 for 1961; and $13,907,908 for 1962.

(11) The John H. Kerr project was constructed between 1946 and 1953. The total capital cost of the John H. Kerr development was approximately $90,000,000. The capital cost was $89,533,895 for 1955; $90,020,438 for 1956; $90,312,095 for 1957; $90,376,635 for 1958; $90,406,835 for 1959; $90,426,056 for 1960; $90,445,015 for 1961; and $90,447,876 for 1962.

(12) The capital cost of the Philpott development's joint-use facilities allocated to power is approximately $3,800,000. The cost so allocated was $3,803,809 for 1955; $3,821,432 for 1956; $3,835,951 for 1957 through 1960; $3,847,969 for 1961; and $3,847,181 for 1962.

(13) The capital cost of the John H. Kerr development's joint-use facilities allocated to power is approximately $39,000,000. The cost so allocated was $38,900,202 for 1955; $39,277,927 for 1956; $39,497,508 for 1957; $39,524,657 for 1958; $39,539,305 for 1959; $39,558,526 for 1960; $39,599,463 for 1961; and $39,601,419 for 1962.

(14) The annual charge for interest on the Philpott development's joint-use facilities allocated to power was $39,864 for 1955 (from August 1); $95,536 for 1956; $95,899 for 1957 through 1960; $96,199 for 1961; and $96,180 for 1962.

(15) The annual charge for interest on the John H. Kerr development's joint-use facilities allocated to power was $407,674 for 1955 (from August 1); $981,948 for 1956; $987,438 for 1957; $988,116 for 1958; $988,483 for 1959; $988,963 for 1960; $989,987 for 1961; and $990,035 for 1962.

(16) The annual charge for depreciation on the Philpott development's joint-use facilities allocated to power was $16,360 for 1955 (from August 1); $39,208 for 1956; $39,357 for 1957 through 1960; $39,480 for 1961; and $39,472 for 1962.

(17) The annual charge for depreciation on the John H. Kerr development's joint-use facilities allocated to power was $167,309 for 1955 (from August 1); $402,992 for 1956; $405,244 for 1957; $405,523 for 1958; $405,673 for 1959; $405,870 for 1960; $406,290 for 1961; and $406,311 for 1962.

(18) The annual charge for maintenance of the Philpott development's joint-use facilities allocated to power was $6,121 for 1955 (from August 1); $16,992 for 1956; $22,665 for 1957; $17,414 for 1958; $16,468 for 1959; $28,491 for 1960; $22,634 for 1961; and 19,698 for 1962.

(19) The annual charge for maintenance of the John H. Kerr development's joint-use facilities allocated to power was $39,254 for 1955 (from August 1); $86,151 for 1956; $114,119 for 1957; $111,424 for 1958; $119,501 for 1959; $150,031 for 1960; and $148,268 for 1961; and $143,708 for 1962.

(20) The total annual charges for interest, maintenance, and depreciation on the Philpott and John H. Kerr development's joint-use facilities allocated to

power was $676,582 for 1955 (from August 1); $1,622,827 for 1956; $1,664,722 for 1957; $1,657,733 for 1958; $1,665,381 for 1959; $1,708,611 for 1960; $1,702,858 for 1961; and $1,695,404 for 1962.

(21) The energy gains at the Roanoke Rapids development attributable to the Philpott and John H. Kerr developments were 42,841 megawatt hours for 1955 (from August 1); 1,362 megawatt hours for 1956; 52,569 megawatt hours for 1957; 72,491 for 1958; 23,660 megawatt hours for 1959; 84,557 megawatt hours for 1960; $38,310 megawatt hours for 1961; and 71,104 megawatt hours for 1962.

(22) The value of the energy gains at the Roanoke Rapids development attributable to the Philpott and John H. Kerr developments was $135,549 for 1955 (from August 1); $4,540 for 1956; $186,778 for 1957; $254,516 for 1958; $80,491 for 1959; $247,752 for 1960; $107,881 for 1961; and $213,668 for 1962.

(23) The dependable capacity gain at the Roanoke Rapids development attributable to the Philpott and John H. Kerr developments was 9,000 kilowatts for each year 1955 (from August 1) through 1962.

(24) The value of the dependable capacity at the Roanoke Rapids development attributable to the Philpott and John H. Kerr developments was $88,656 for 1955 (from August 1) and $211,500 for each year 1956 through 1962.

(25) The value of the energy and power gains at the Roanoke Rapids development attributable to the Philpott and John H. Kerr developments (in (22) and (24)) was $224,205 for 1955 (from August 1); $216,040 for 1956; $398,278 for 1957; $466,016 for 1958; $291,991 for 1959; $459,252 for 1960; $319,381 for 1961; and $425,168 for 1962.

(26) The cost of the energy and power produced at the Philpott and John H. Kerr developments for purposes of apportioning the annual charge for interest, maintenance, and depreciation was $748,172 for 1955 (from August 1); $1,797,406 for 1956; $1,846,376 for 1957; $1,846,489 for 1958; $1,880,469 for 1959; $1,929,182 for 1960; $1,926,323 for 1961; and $1,888,607 for 1962.

(27) The annual charges for interest, maintenance and depreciation on the Philpott and John H. Kerr developments' joint-use facilities allocated to power are apportioned to the Roanoke Rapids development as follows: $156,000 for 1955 (from August 1); $174,100 for 1956; $295,500 for 1957; $334,100 for 1958; $223,800 for 1959; $328,500 for 1960; $242,200 for 1961; and $311,500 for 1962.

(28) The total annual charge apportioned to Roanoke Rapids (in (27)) for the period August 1, 1955 through December 31, 1962, is $2,065,700. A reduction of $8200 is allowable for the effect on the apportionment from headwater benefits provided by the four non-federal projects of Martinsville, Spray, Schoolfield, and Riverside. The remaining annual charge is $2,057,500.

(29) The cost of making the headwater benefits assessment pursuant to Section 10(f) of the Act for the period to July 23, 1965, is $43,986.

### ORDER

WHEREFORE, *it is hereby ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure that the Virginia Electric & Power Company shall pay to the Federal Power Commission for the purposes set out in the foregoing findings the sum of $2,101,486, less any amounts that may have heretofore been paid on account thereof, which payment shall be made within 60 days from the date of issuance of this decision.

HARRY C. SHRIVER,
*Presiding Examiner.*

## (DOCKET NO. E-6684) APPENDIX I

[App. I consists of pp. 19 through 32 of exhibit I-A]

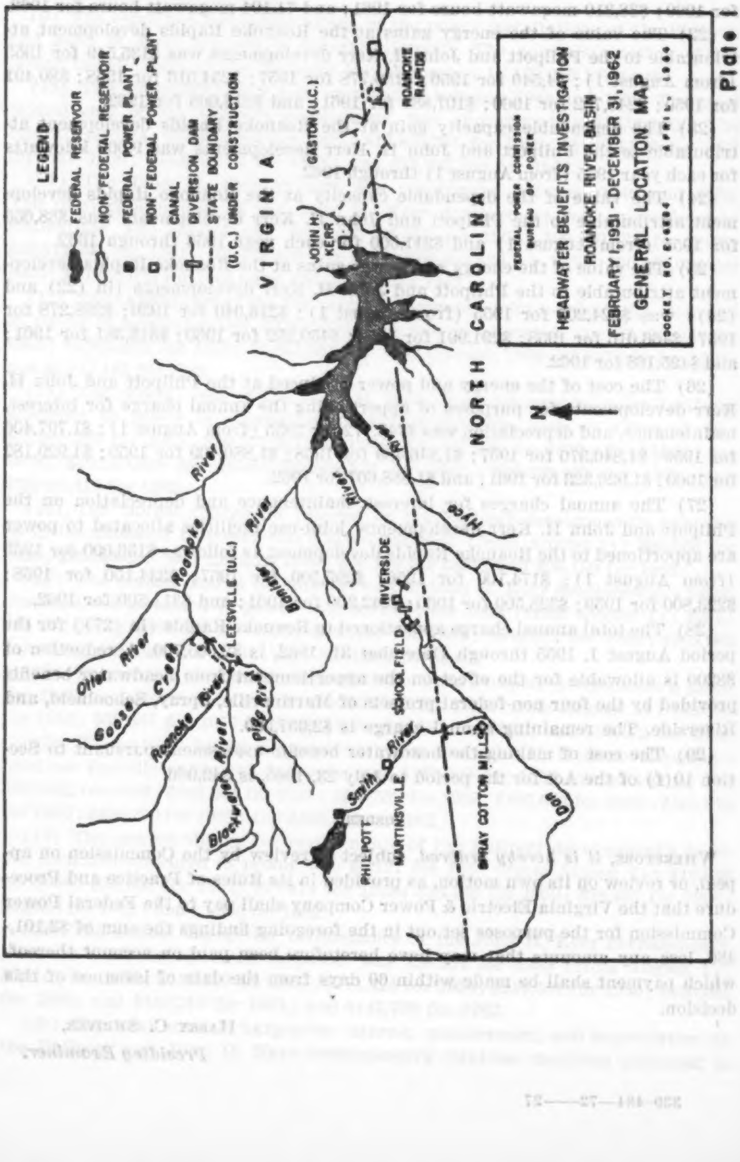
LEGEND
FEDERAL RESERVOIR
NON-FEDERAL RESERVOIR
FEDERAL POWER PLANT
NON-FEDERAL POWER PLANT
CANAL
DIVERSION DAM
STATE BOUNDARY
(U.C.) UNDER CONSTRUCTION
VIRGINIA
NORTH CAROLINA
Otter River
Goose Creek
Roanoke River
Roanoke River
Blackwater River
Pigg River
LEESVILLE (U.C.)
Banister River
Hyco River
River
Smith River
Dan
PHILPOTT
MARTINSVILLE
SCHOOLFIELD
RIVERSIDE
SPRAY COTTON MILLS
JOHN H. KERR
GASTON (U.C.)
ROANOKE RAPIDS
N
FEDERAL POWER COMMISSION
BUREAU OF POWER
HEADWATER BENEFITS INVESTIGATION
ROANOKE RIVER BASIN
FEBRUARY 1, 1951 - DECEMBER 31, 1962
GENERAL LOCATION MAP
DOCKET NO. E-6684
APRIL, 1964

Plate I

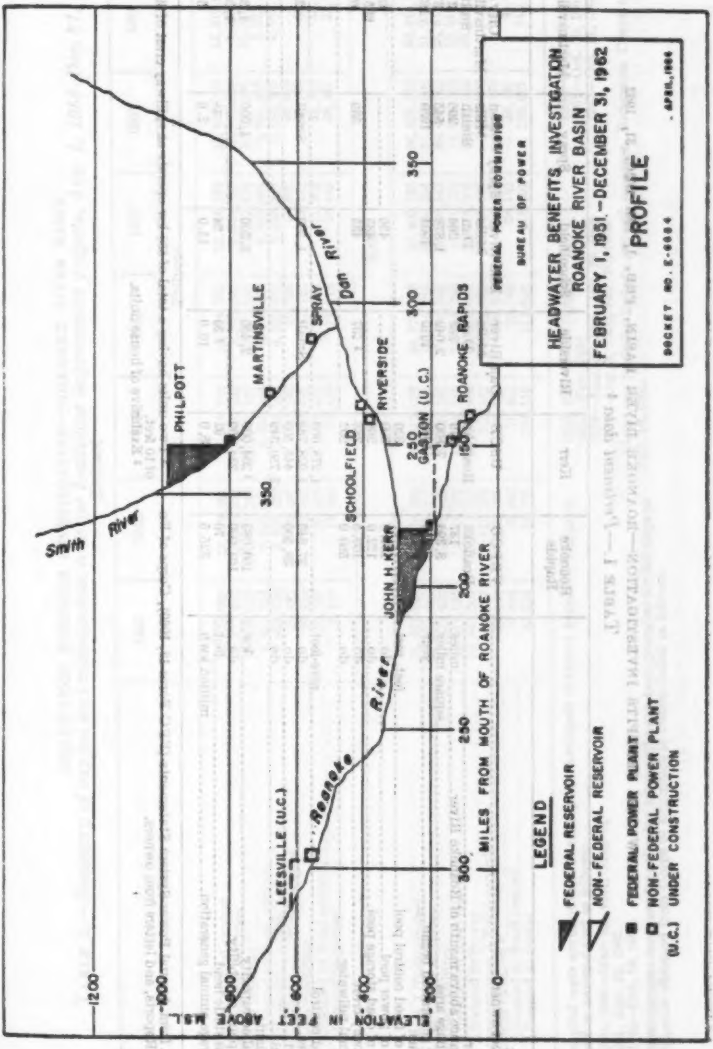
ELEVATION IN FEET ABOVE MSL
0
200
400
600
800
1000
1200
MILES FROM MOUTH OF ROANOKE RIVER
150
200
250
300
350
250
300
350
Smith River
Dan River
Roanoke River
PHILPOTT
MARTINSVILLE
SPRAY
SCHOOLFIELD
RIVERSIDE
GASTON (U.C.)
ROANOKE RAPIDS
JOHN H. KERR
LEESVILLE (U.C.)
LEGEND
FEDERAL RESERVOIR
NON-FEDERAL RESERVOIR
FEDERAL POWER PLANT
NON-FEDERAL POWER PLANT
(U.C.) UNDER CONSTRUCTION
FEDERAL POWER COMMISSION
BUREAU OF POWER
HEADWATER BENEFITS INVESTIGATION
ROANOKE RIVER BASIN
FEBRUARY 1, 1951.–DECEMBER 31, 1962
PROFILE
DOCKET NO. E-6664
APRIL, 1964

Plate 2

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN, FEB. 1, 1951–DEC. 31, 1962

TABLE 1.—*Pertinent data* [1]

| | Roanoke Rapids | Kerr | Riverside | Schoolfield | Spray | Martinsville | Philpott |
|---|---|---|---|---|---|---|---|
| General: | | | | | | | |
| Project owner | VEPCO | USCE | Dan River Mills | Dan River Mills | Spray Cotton Mills | City of Martinsville | USCE |
| River | Roanoke | Roanoke | Dan | Dan | Smith | Smith | Smith |
| Distance above mouth of Roanoke River ... miles | 137 | 179 | 263 | 266 | 296 | 318 | 337 |
| Drainage area ... square miles | 8,395 | 7,800 | 2,049 | 1,878 | 545 | 374 | 212 |
| Year generation began ... year | 1955 | 1952 | 1910 | 1904 | 1930 | 1932 | 1953 |
| Elevations: | | | | | | | |
| Top of flood control pool ... feet, msl | | 320 | | | | | 985 |
| Top of power pool ... do | 132.0 | 300 | | 436 | | 697 | 974 |
| Top of dead storage pool ... do | 122.0 | 268 | | 433 | | 695.5 | 920 |
| Spillway crest ... do | 109.5 | 288 | [2] 407 | 435 | 539 | 696 | 985 |
| Normal tailwater ... do | 560.0 | 202 | | | | | 811 |
| Storage: | | | | | | | |
| Flood control ... acre-feet | | 1,278,060 | | | | | 34,080 |
| Power ... do | 37,640 | 1,028,789 | Small | 1,500 | Small | 250 | 110,010 |
| Dead ... do | 39,500 | 443,500 | | | | | 53,970 |
| Total ... do | | 2,750,349 | | | | | 198,060 |
| Power plant: | | | | | | | |
| Installed capacity ... kw | 100,080 | [3] 204,000 | 2,450 | 5,300 | 1,000 | 1,300 | 14,000 |
| Net plant capability ... do | 103,000 | 234,600 | | | | 1,300 | 16,000 |
| Gross static head ... feet | 76 | 92 | [2] 20 | 28 | 38 | 32 | 162 |
| Average annual generation ... million kwh | 325.5 | 438.0 | 10.0 | 15.0 | 2.6 | 5.0 | 25.4 |

---

[1] Data from Annual Power System Statements (FPC Form 12, 1960), Corps of Engineers' Reports, and letters from owners.

[2] Two units having a total of 550 kw operate at spillway crest of 395 feet and a head of 10 feet.

[3] Exclusive of house units.

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN

TABLE 2.—*Summary of capital and maintenance costs for headwater improvement projects, Aug. 1, 1955–Dec. 31, 1962*

[Dollars]

| | 1955 | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 |
|---|---|---|---|---|---|---|---|---|
| | | | | Philpott | | | | |
| Capital costs: [1] Total project | 13,873,065 | 13,889,591 | 13,914,730 | 13,914,730 | 13,914,730 | 13,914,730 | 13,910,126 | 13,907,908 |
| Specific power facilities | 3,377,372 | 3,376,275 | 3,386,895 | 3,386,895 | 3,386,895 | 3,386,895 | 3,386,895 | 3,386,895 |
| Joint-use facilities | 10,495,693 | 10,513,316 | 10,527,835 | 10,527,835 | 10,527,835 | 10,527,835 | 10,523,231 | 10,521,013 |
| Allocated to flood control | 6,691,884 | 6,691,884 | 6,691,884 | 6,691,884 | 6,691,884 | 6,691,884 | 6,675,262 | 6,673,832 |
| Allocated to power | 3,803,890 | 3,821,432 | 3,835,951 | 3,835,951 | 3,835,951 | 3,835,951 | 3,847,969 | 3,847,181 |
| Actual maintenance: [2] Total project | 25,812 | 69,281 | 82,299 | 69,929 | 70,366 | 96,073 | ---- | ---- |
| Joint-use facilities [3] | 16,828 | 45,441 | 56,492 | 42,142 | 38,372 | 62,709 | 55,976 | 41,783 |
| Allocated to flood control | 10,707 | 28,449 | 33,827 | 24,728 | 21,904 | 34,218 | 33,342 | 22,085 |
| Allocated to power | 6,121 | 16,992 | 22,665 | 17,414 | 16,468 | 28,491 | 22,634 | 19,698 |
| | | | | Kerr | | | | |
| Capital costs: [1] Total project | 89,533,895 | 90,020,438 | 90,312,095 | 90,376,635 | 90,406,835 | 90,426,056 | 90,445,015 | 90,447,876 |
| Specific power facilities | 31,692,457 | 31,801,275 | 31,873,351 | 31,910,742 | 31,926,294 | 31,926,294 | 31,926,294 | 31,926,294 |
| Joint-use facilities | 57,841,438 | 58,219,163 | 58,438,744 | 58,465,893 | 58,480,541 | 58,499,762 | 58,518,721 | 58,521,582 |
| Allocated to flood control | 18,941,236 | 18,941,236 | 18,941,236 | 18,941,236 | 18,941,236 | 18,941,236 | 18,919,258 | 18,920,163 |
| Allocated to power | 38,900,202 | 39,277,927 | 39,497,508 | 39,524,657 | 39,539,305 | 39,558,526 | 39,599,463 | 39,601,419 |
| Actual maintenance: [2] Total project | 79,467 | 176,739 | 315,562 | 329,089 | 243,047 | 286,960 | ---- | ---- |
| Joint-use facilities [3] | 49,118 | 107,451 | 140,600 | 137,022 | 147,653 | 183,178 | 182,297 | 176,980 |
| Allocated to flood control | 9,864 | 21,300 | 26,481 | 25,598 | 28,152 | 33,147 | 34,029 | 33,272 |
| Allocated to power | 39,254 | 86,151 | 114,119 | 111,424 | 119,501 | 150,031 | 148,268 | 143,708 |

[1] All capital costs are as of June 30 each year. Amounts obtained from the Corps of Engineers in letters dated as follows:

1955 to 1960—Mar. 23, 1961, May 2, 1961, Apr. 12, 1963.
1961–62—Oct. 15, 1964.

[2] All maintenance costs are for calendar years and have been prorated for 153 days of 1955. Amounts obtained from Corps of Engineers in letters dated as follows:

1955, 1956—Mar. 7, 1957
1957—Feb. 1958
1958—Aug. 27, 1958, Jan. 19, 1959
1959—Aug. 3, 1959, Jan. 20, 1960.
1960—July 20, 1960, Jan. 16, 1961
1961—Oct. 30, 1961, Oct. 11, 1963.
1962—Oct. 11, 1963.

[3] Joint-use facilities include general expenses. Reference: Corps of Engineers letter, Apr. 10, 1962.

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN

TABLE 3.—*Annual dam and reservoir costs of interest, maintenance, and depreciation to be borne by power, Aug. 1, 1955–Dec. 31, 1962*

[Dollars]

| | 1955 | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 |
|---|---|---|---|---|---|---|---|---|
| | | | | Philpott | | | | |
| Capital costs of joint-use facilities allocated to power | 3,803,809 | 3,821,432 | 3,835,951 | 3,835,951 | 3,835,951 | 3,835,951 | 3,847,960 | 3,847,181 |
| Interest (2.5 percent) | [1] 39,864 | 95,536 | 95,899 | 95,899 | 95,899 | 95,899 | 96,199 | 96,180 |
| Depreciation (1.026 percent) | [1] 16,360 | 39,208 | 39,357 | 39,357 | 39,357 | 39,357 | 39,480 | 39,472 |
| Maintenance costs allocated to power | [1] 6,121 | 16,992 | 22,665 | 17,414 | 16,468 | 28,491 | 22,634 | 19,698 |
| Section 10 (f) costs to be borne by power | [1] 62,345 | 151,736 | 157,921 | 152,670 | 151,724 | 163,747 | 158,313 | 155,350 |
| | | | | Kerr | | | | |
| Capital costs of joint-use facilities allocated to power | 38,900,202 | 39,277,927 | 39,497,508 | 39,524,657 | 39,539,305 | 39,558,526 | 39,599,463 | 39,601,419 |
| Interest (2.5 percent) | [1] 407,674 | 981,948 | 987,438 | 988,116 | 988,483 | 988,963 | 989,987 | 990,035 |
| Depreciation (1.026 percent) | [1] 167,309 | 402,992 | 405,244 | 405,523 | 405,673 | 405,870 | 406,290 | 406,311 |
| Maintenance costs allocated to power | [1] 39,254 | 86,151 | 114,119 | 111,424 | 119,501 | 150,031 | 148,268 | 143,708 |
| Section 10 (f) costs to be borne by power | [1] 614,237 | 1,471,091 | 1,506,801 | 1,505,063 | 1,513,657 | 1,544,864 | 1,544,545 | 1,540,054 |
| | | | | Philpott and Kerr | | | | |
| Total Section 10 (f) costs to be borne by power (Cp) | [1] 676,582 | 1,622,827 | 1,664,722 | 1,657,733 | 1,665,381 | 1,708,611 | 1,702,858 | 1,695,404 |

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[1] From Aug. 1.

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN, FEB. 1, 1951–DEC. 31, 1960

### TABLE 4.—*Reservoir inflow computations*

[Reservoir: *Philpott;* River: *Smith;* Month, year: *March 1960*]

| Date | Hour [1] | Elevation, feet msl |  | Total contents, 1,000 AF | Change in contents |  |  | Flow, cfs |  |
|---|---|---|---|---|---|---|---|---|---|
|  |  | Rule curve | Reservoir level |  | Acre-feet | Day-second-feet |  |  |  |
|  |  |  |  |  |  | Stored | Draw-down | Out-flow [2] | Inflow |
|  |  |  | 974.39 | 168.49 |  |  |  |  |  |
| 1 | ---------- | 971.0 | 974.25 | 168.10 | −390 | ---------- | 197 | 697 | 500 |
| 2 | ---------- | ↑ | 974.25 | 168.10 | 0 | 0 | 0 | 700 | 700 |
| 3 | ---------- |  | 974.12 | 167.74 | −360 | ---------- | 181 | 698 | 517 |
| 4 | ---------- |  | 973.93 | 167.19 | −550 | ---------- | 277 | 698 | 421 |
| 5 | ---------- |  | 973.73 | 166.59 | −600 | ---------- | 302 | 696 | 394 |
| 6 | ---------- |  | 973.98 | 167.34 | +750 | 378 | ---------- | 30 | 408 |
| 7 | ---------- |  | 973.78 | 166.74 | −600 | ---------- | 302 | 698 | 396 |
| 8 | ---------- |  | 973.54 | 166.02 | −720 | ---------- | 363 | 698 | 335 |
| 9 | ---------- |  | 973.35 | 165.45 | −570 | ---------- | 287 | 698 | 411 |
| 10 | ---------- |  | 973.12 | 164.76 | −690 | ---------- | 348 | 698 | 350 |
| 11 | ---------- | Linear variation | 972.87 | 164.04 | −120 | ---------- | 363 | 703 | 340 |
| 12 | ---------- |  | 973.11 | 164.73 | +690 | 348 | ---------- | 30 | 378 |
| 13 | ---------- |  | 973.30 | 165.30 | +570 | 287 | ---------- | 30 | 317 |
| 14 | ---------- |  | 973.05 | 164.55 | −750 | ---------- | 378 | 698 | 320 |
| 15 | ---------- |  | 972.83 | 163.92 | −630 | ---------- | 318 | 704 | 386 |
| 16 | ---------- |  | 972.72 | 163.62 | −300 | ---------- | 151 | 708 | 557 |
| 17 | ---------- |  | 972.56 | 163.17 | −450 | ---------- | 227 | 708 | 481 |
| 18 | ---------- |  | 972.56 | 163.17 | 0 | 0 | 0 | 708 | 708 |
| 19 | ---------- |  | 972.86 | 164.01 | +840 | 424 | ---------- | 30 | 454 |
| 20 | ---------- |  | 973.22 | 165.06 | +1,050 | 529 | ---------- | 30 | 559 |
| 21 | ---------- |  | 973.07 | 164.61 | −450 | ---------- | 227 | 697 | 470 |
| 22 | ---------- |  | 972.93 | 164.20 | −410 | ---------- | 207 | 697 | 490 |
| 23 | ---------- |  | 972.79 | 163.81 | −390 | ---------- | 197 | 698 | 501 |
| 24 | ---------- |  | 972.69 | 163.53 | −280 | ---------- | 141 | 699 | 558 |
| 25 | ---------- |  | 972.63 | 163.36 | −170 | ---------- | 86 | 698 | 612 |
| 26 | ---------- |  | 972.90 | 164.12 | +760 | 383 | ---------- | 30 | 413 |
| 27 | ---------- |  | 973.28 | 165.24 | +1,120 | 565 | ---------- | 30 | 595 |
| 28 | ---------- |  | 973.28 | 165.24 | 0 | 0 | 0 | 693 | 693 |
| 29 | ---------- | ↓ | 973.50 | 165.90 | +660 | 333 | ---------- | 689 | 1,022 |
| 30 | ---------- |  | 974.79 | 169.61 | +3,710 | 1,870 | ---------- | 689 | 2,559 |
| 31 | ---------- | 973.0 | 975.20 | 170.80 | +1,190 | 600 | ---------- | 890 | 1,490 |
| Total for month |  |  |  |  | +2,310 | 5,717 | 4,552 | 17,179 | 18,344 |
| Net change in day-second-feet |  |  |  |  | +1,165 | 1,165 | ---------- | ---------- | 1,165 |
| Average flow in cfs |  |  |  |  | ---------- |  |  | 554 | 592 |
| Change in contents for month [3] |  |  |  |  | +2,310 |  |  |  |  |

---

[1] By 24-hour clock. Time is 2400 (midnight) of day indicated unless otherwise noted. Average flow or change in reservoir contents are for period ending at time indicated.

[2] Based on powerhouse records.

[3] Based on total contents of beginning and end of month.

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN, FEB. 1, 1951–DEC. 31, 1962

## TABLE 5.—*Reservoir inflow computations*

[Reservoir: *J. H. Kerr;* River: *Roanoke;* Month, year: *March 1960*]

| Date | Hour [1] | Elevation, feet msl | | Total contents, 1,000 AF | Change in contents | | | Flow, cfs | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | Acre-feet | Day-second-feet | | | |
| | | Rule curve | Reservoir level | | | Stored | Draw-down | Out-flow [2] | Inflow |
| | | | 304.68 | 1,772.9 | | | | | |
| 1 | -------- | 297.0 | 304.25 | 1.749.5 | −23,400 | -------- | 11,798 | 23,172 | 11,374 |
| 2 | -------- | ↑ | 303.86 | 1,728.3 | −21,200 | -------- | 10,688 | 23,312 | 12,624 |
| 3 | -------- | | 303.75 | 1,722.5 | −5,800 | -------- | 2,924 | 17,751 | 14,827 |
| 4 | -------- | | 303.19 | 1,692.5 | −30,000 | -------- | 15,125 | 23,284 | 8,159 |
| 5 | -------- | | 302.62 | 1,662.6 | −29,900 | -------- | 15,075 | 24,720 | 9,645 |
| 6 | -------- | | 302.06 | 1,633.4 | −29,200 | -------- | 14,722 | 23,730 | 9,008 |
| 7 | -------- | | 301.47 | 1,603.4 | −30,000 | -------- | 15,125 | 24,161 | 9,036 |
| 8 | -------- | | 300.83 | 1,571.1 | −32,300 | -------- | 16,285 | 24,236 | 7,951 |
| 9 | -------- | | 300.24 | 1,541.9 | −29,200 | -------- | 14,722 | 24,093 | 9,371 |
| 10 | -------- | | 299.82 | 1,521.3 | −20,600 | -------- | 10,386 | 18,212 | 7,826 |
| 11 | -------- | | 299.39 | 1,500.5 | −20,800 | -------- | 10,487 | 18,342 | 7,855 |
| 12 | -------- | | 299.58 | 1,509.7 | +9,200 | 4,638 | -------- | 4,802 | 9,440 |
| 13 | -------- | | 299.74 | 1,517.4 | +7,700 | 3,882 | -------- | 4,703 | 8,585 |
| 14 | -------- | | 299.53 | 1,507.3 | −10,100 | -------- | 5,092 | 14,289 | 9,197 |
| 15 | -------- | | 299.25 | 1,493.8 | −13,500 | -------- | 6,806 | 15,992 | 9,186 |
| 16 | -------- | | 299.33 | 1,497.6 | +3,800 | 1,916 | -------- | 15,753 | 17,669 |
| 17 | -------- | Linear variation | 299.61 | 1,511.2 | +13,600 | 6,857 | -------- | 15,876 | 22,733 |
| 18 | -------- | | 300.03 | 1,531.5 | +20,300 | 10,235 | -------- | 17,666 | 27,901 |
| 19 | -------- | | 300.84 | 1,571.6 | +40,100 | 20,217 | -------- | 13,309 | 33,526 |
| 20 | -------- | | 301.39 | 1,599.3 | +27,700 | 13,966 | -------- | 16,981 | 30,947 |
| 21 | -------- | | 301.78 | 1,619.1 | +19,800 | 9,983 | -------- | 16,482 | 26,465 |
| 22 | -------- | | 302.00 | 1,630.3 | +11,200 | 5,647 | -------- | 17,591 | 23,238 |
| 23 | -------- | | 302.04 | 1,632.4 | +2,100 | 1,059 | -------- | 17,420 | 18,479 |
| 24 | -------- | | 301.99 | 1,629.8 | −2,600 | -------- | 1,311 | 18,648 | 17,337 |
| 25 | -------- | | 301.85 | 1,622.7 | −7,100 | -------- | 3,580 | 18,379 | 14,799 |
| 26 | -------- | | 301.73 | 1,616.6 | −6,100 | -------- | 3,075 | 18,550 | 15,475 |
| 27 | -------- | | 301.57 | 1,608.5 | −8,100 | -------- | 4,084 | 17,448 | 13,364 |
| 28 | -------- | | 301.36 | 1,597.8 | −10,700 | -------- | 5,395 | 17,648 | 12,253 |
| 29 | -------- | ↓ | 301.17 | 1,588.1 | −9,700 | -------- | 4,890 | 17,616 | 12,726 |
| 30 | -------- | | 301.38 | 1,598.8 | +10,700 | 5,395 | -------- | 17,417 | 22,812 |
| 31 | -------- | 302.0 | 301.85 | 1,622.7 | +23,900 | 12,050 | -------- | 16,646 | 28,696 |
| Total for month | | | | | −150,200 | 95,845 | 171,570 | 558,229 | 482,504 |
| Net Change in day-second-feet | | | | | 75,726 | -------- | -------- | 75,725 | -------- |
| Average flow in cfs | | | | | -------- | | | 18,007 | 15,565 |
| Change in contents for month [3] | | | | | −150,200 | | | | |

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[1] By 24-hour clock. Time is 2400 (midnight) of day indicated unless otherwise noted. Average flow or change in reservoir contents are for period ending at time indicated.

[2] Based on powerhouse records.

[3] Based on total contents of beginning and end of month.

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN, FEB. 1, 1951–DEC. 31, 1962

### TABLE 6.—*Roanoke Rapids operation data*

[Plant: *Roanoke Rapids;* River: *Roanoke;* Month and year: *March 1960;* Company: *Virginia Electric & Power Co.*]

| Date | Day | Generation mwh, gross | Elevation,[1] msl | | Head[2] feet | | Water supply, day-second-feet | | | Discharge, day-second-feet | | | Minimum | Date |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Power pool | Tailwater | Gross | Net | Inflow | Stored | Drawdown | Turbines | Spillway | Total | | |
| 1 | T | 2,341 | 131.8 | 58.8 | 73.1 | 71.6 | 28,732 | 2,640 | | 20,092 | 6,000 | 26,092 | 25,800 | 1 |
| 2 | W | 2,334 | 132.4 | 58.9 | 72.9 | 71.4 | 24,124 | | 1,980 | 20,104 | 6,000 | 26,104 | 26,104 | 2 |
| 3 | T | 2,334 | 131.6 | 58.9 | 72.9 | 71.4 | 25,616 | | 455 | 20,071 | 6,000 | 26,071 | 26,071 | 3 |
| 4 | F | 2,261 | 131.4 | 58.9 | 70.8 | 69.3 | 21,403 | | 4,680 | 20,083 | 6,000 | 26,083 | 25,700 | 4 |
| 5 | S | 2,260 | 129.2 | 58.9 | 70.7 | 69.2 | 27,114 | 1,035 | | 20,079 | 6,000 | 26,079 | 25,600 | 5 |
| 6 | S | 2,301 | 129.7 | 58.9 | 71.5 | 70.0 | 28,034 | 1,905 | | 20,129 | 6,000 | 26,129 | 25,800 | 6 |
| 7 | M | 2,285 | 130.6 | 58.9 | 71.5 | 70.0 | 26,501 | 455 | | 20,046 | 6,000 | 26,046 | 25,700 | 7 |
| 8 | T | 2,291 | 130.8 | 58.9 | 71.9 | 70.4 | 26,514 | 460 | | 20,054 | 6,000 | 26,054 | 25,500 | 8 |
| 9 | W | 2,308 | 131.0 | 58.9 | 72.4 | 70.9 | 27,326 | 1,280 | | 20,046 | 6,000 | 26,046 | 25,700 | 9 |
| 10 | T | 2,327 | 131.6 | 58.9 | 72.5 | 71.0 | 21,110 | | 1,965 | 20,075 | 3,000 | 23,075 | 19,700 | 10 |
| 11 | F | 2,336 | 130.7 | 58.4 | 72.6 | 71.1 | 21,128 | 1,095 | | 20,033 | 0 | 20,033 | 19,800 | 11 |
| 12 | S | 2,276 | 131.2 | 58.4 | 72.3 | 70.8 | 13,418 | | 6,140 | 19,558 | 0 | 19,558 | 19,600 | 12 |
| 13 | S | 491 | 128.2 | 53.5 | 78.0 | 76.5 | 5,453 | 1,465 | | 3,988 | 0 | 3,988 | 1,000 | 13 |
| 14 | M | 1,392 | 129.0 | 51.0 | 73.9 | 72.4 | 10,083 | | 2,225 | 12,308 | 0 | 12,308 | 1,000 | 14 |
| 15 | T | 1,690 | 127.8 | 52.0 | 73.9 | 72.4 | 17,614 | 2,835 | | 14,779 | 0 | 14,779 | 1,000 | 15 |
| 16 | W | 1,746 | 129.3 | 54.7 | 75.2 | 73.7 | 18,483 | 3,425 | | 15,058 | 0 | 15,058 | 1,000 | 16 |
| 17 | T | 2,265 | 130.9 | 57.3 | 73.6 | 72.1 | 17,632 | | 1,535 | 19,167 | 0 | 19,167 | 10,900 | 17 |
| 18 | F | 2,345 | 130.2 | 57.6 | 72.9 | 71.4 | 21,999 | 1,970 | | 20,029 | 0 | 20,029 | 19,600 | 18 |
| 19 | S | 2,370 | 131.1 | 57.8 | 73.2 | 71.7 | 17,353 | | 2,810 | 20,163 | 0 | 20,163 | 19,300 | 19 |
| 20 | S | 1,885 | 129.8 | 57.8 | 74.9 | 73.4 | 18,012 | 2,145 | | 15,867 | 0 | 15,867 | 7,400 | 20 |
| 21 | M | 2,378 | 130.8 | 57.0 | 74.6 | 73.1 | 21,243 | 1,285 | | 19,958 | 0 | 19,958 | 19,600 | 21 |
| 22 | T | 2,366 | 131.4 | 57.1 | 73.7 | 72.2 | 18,798 | | 1,285 | 20,083 | 0 | 20,083 | 19,800 | 22 |
| 23 | W | 2,353 | 130.8 | 57.3 | 73.3 | 71.8 | 18,774 | | 1,305 | 20,079 | 0 | 20,079 | 19,900 | 23 |
| 24 | T | 2,170 | 130.2 | 57.3 | 74.7 | 73.2 | 20,492 | 2,175 | | 18,317 | 0 | 18,317 | 9,600 | 24 |
| 25 | F | 2,367 | 131.2 | 57.3 | 74.0 | 72.5 | 19,913 | 0 | 0 | 19,913 | 0 | 19,913 | 19,700 | 25 |
| 26 | S | 2,378 | 131.2 | 57.0 | 74.0 | 72.5 | 19,001 | | 870 | 19,871 | 0 | 19,871 | 19,300 | 26 |
| 27 | S | 2,376 | 130.8 | 57.0 | 73.9 | 72.4 | 19,950 | 0 | 0 | 19,950 | 0 | 19,950 | 19,000 | 27 |
| 28 | M | 2,339 | 130.8 | 59.0 | 73.4 | 71.9 | 19,925 | 0 | 0 | 19,925 | 0 | 19,925 | 18,800 | 28 |
| 29 | T | 2,147 | 130.1 | 57.0 | 74.6 | 73.1 | 16,614 | | 1,515 | 18,129 | 0 | 18,129 | 9,400 | 29 |
| 30 | W | 2,258 | 130.6 | 57.0 | 74.1 | 72.6 | 20,127 | 1,060 | | 19,067 | 0 | 19,067 | 14,200 | 30 |
| 31 | T | 2,366 | 130.9 | 56.7 | 74.0 | 72.5 | 20,739 | 685 | | 20,054 | 0 | 20,054 | 19,800 | 31 |
| | | 67,336 | | | | | | | | 577,075 | | | | |

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[1] 12:01 a.m. reading. [2] 24-hour average.

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN, FEB. 1, 1951-DEC. 31, 1962

TABLE 7.—*Estimated energy gains at Roanoke Rapids, sample computation sheet—March 1960*

| Day | Storage changes at reservoir projects, dsf | | | | Roanoke Rapids | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Stored | | Released | | Net releases | Spill, dsf | Upstream storage releases usable, dsf | Turbine discharge,[1] dsf | Generation | | Estimated energy gains,[3] 1,000 kwh |
| | Philpott | Kerr | Philpott | Kerr | | | | | Reported, 1,000 kwh | Kwh/cfs [2] | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
| 1 | | | 45 | 12, 756 | 12, 801 | 6, 000 | 6, 801 | 20, 092 | 2, 341 | 116. 5 | 792 |
| 2 | | | 0 | 11, 798 | 11, 798 | 6, 000 | 5, 798 | 20, 104 | 2, 334 | 116. 1 | 673 |
| 3 | | | 212 | 10, 688 | 10, 900 | 6, 000 | 4, 900 | 20, 071 | 2, 334 | 116. 3 | 570 |
| 4 | | | 126 | 2, 924 | 3, 050 | 6, 000 | 0 | 20, 083 | 2, 261 | 112. 6 | 0 |
| 5 | | | 197 | 15, 125 | 15, 322 | 6, 000 | 9, 322 | 20, 079 | 2, 260 | 112. 6 | 1, 050 |
| 6 | | | 0 | 15, 075 | 15, 075 | 6, 000 | 9, 075 | 20, 129 | 2, 301 | 114. 3 | 1, 037 |
| 7 | | | 181 | 14, 722 | 14, 903 | 6, 000 | 8, 903 | 20, 046 | 2, 285 | 114. 0 | 1, 015 |
| 8 | | | 277 | 15, 125 | 15, 402 | 6, 000 | 9, 402 | 20, 054 | 2, 291 | 114. 2 | 1, 074 |
| 9 | | | 302 | 16, 285 | 16, 587 | 6, 000 | 10, 587 | 20, 046 | 2, 308 | 115. 1 | 1, 218 |
| 10 | 378 | | | 14, 722 | 14, 344 | 3, 000 | 11, 344 | 20, 075 | 2, 327 | 115. 9 | 1, 315 |
| 11 | | | 302 | 10, 386 | 10, 688 | 0 | 10, 688 | 20, 033 | 2, 336 | 116. 6 | 1, 246 |
| 12 | | | 363 | 10, 487 | 10, 850 | | 10, 850 | 19, 558 | 2, 276 | 116. 4 | 1, 263 |
| 13 | | 4, 638 | 287 | | −4, 351 | | −4, 351 | 3, 988 | 491 | 123. 1 | −536 |
| 14 | | 3, 882 | 348 | | −3, 534 | | −3, 534 | 12, 308 | 1, 392 | 113. 1 | −400 |
| 15 | | | 363 | 5, 092 | 5, 455 | | 5, 455 | 14, 779 | 1, 690 | 114. 4 | 624 |
| 16 | 348 | | | 6, 806 | 6, 458 | | 6, 458 | 15, 058 | 1, 746 | 116. 0 | 749 |
| 17 | 287 | 1, 916 | | | −2, 203 | | −833 | 19, 167 | 2, 265 | 118. 2 | −98 |
| 18 | | 6, 857 | 378 | | −6, 479 | | −0 | 20, 029 | 2, 345 | 117. 1 | 0 |
| 19 | | 10, 235 | 318 | | −9, 917 | | −0 | 20, 163 | 2, 370 | 117. 5 | 0 |
| 20 | | 20, 217 | 151 | | −20, 066 | | −4, 133 | 15, 867 | 1, 885 | 118. 8 | −491 |
| 21 | | 13, 966 | 227 | | −13, 739 | | −42 | 19, 958 | 2, 378 | 119. 2 | −5 |
| 22 | | 9, 983 | 0 | | −9, 983 | | −0 | 20, 083 | 2, 366 | 117. 8 | 0 |
| 23 | 424 | 5, 647 | | | −6, 071 | | −0 | 20, 079 | 2, 353 | 117. 2 | 0 |
| 24 | 529 | 1, 059 | | | −1, 588 | | −1, 588 | 18, 317 | 2, 170 | 118. 5 | −188 |
| 25 | | | 227 | 1, 311 | 1, 538 | | 1, 538 | 19, 913 | 2, 367 | 118. 9 | 183 |
| 26 | | | 207 | 3, 580 | 3, 787 | | 3, 787 | 19, 871 | 2, 378 | 119. 7 | 453 |
| 27 | | | 197 | 3, 075 | 3, 272 | | 3, 272 | 19, 950 | 2, 376 | 119. 1 | 390 |
| 28 | | | 141 | 4, 084 | 4, 225 | | 4, 225 | 19, 925 | 2, 339 | 117. 4 | 496 |
| 29 | | | 86 | 5, 395 | 5, 481 | | 5, 481 | 18, 129 | 2, 147 | 118. 4 | 649 |
| 30 | 383 | | | 4, 890 | 4, 507 | | 4, 507 | 19, 067 | 2, 258 | 118. 4 | 534 |
| 31 | 565 | 5, 395 | | | −5, 960 | 0 | 0 | 20, 054 | 2, 366 | 118. 0 | 0 |
| Total | | | | | | | | 577, 075 | 67, 336 | | 13, 614 |
| Average | | | | | | | | | | 116. 7 | |

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[1] Except as reported the hydraulic capacity is 20,000 cfs.

[2] Column (10) divided by column (9).

[3] Column (8) times column (11).

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN

TABLE 8.—*Estimated energy gains at Roanoke Rapids from upstream regulation, Aug. 1, 1955–Dec. 31, 1962*

[1,000 kilowatt hours]

| Month | 1955 [1] | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 |
|---|---|---|---|---|---|---|---|---|
| January | ---------- | 8,170 | 2,036 | 5,347 | −5,320 | 10,236 | −336 | 17,081 |
| February | ---------- | −14,908 | 3,594 | 5,449 | 6,005 | −2,266 | −19,406 | 1,204 |
| March | ---------- | −8,696 | −3,987 | −897 | −12,572 | 13,614 | 5,533 | 8,297 |
| April | ---------- | −14,718 | 6,407 | 6,944 | −532 | 16,168 | 9,455 | 7,233 |
| May | ---------- | 8,996 | 8,719 | 15,614 | 10,165 | 4,579 | 5,542 | 6,477 |
| June | ---------- | 3,327 | 2,398 | 4,170 | 5,266 | 8,256 | 4,576 | 6,603 |
| July | ---------- | 4,068 | 4,400 | 5,165 | 493 | 3,183 | 6,131 | 1,936 |
| August | 5,569 | 9,992 | 5,638 | 3,415 | 10,029 | 5,025 | 1,788 | 5,269 |
| September | 7,994 | 6,932 | 1,480 | 11,195 | 3,224 | 4,663 | 11,590 | 3,768 |
| October | 10,849 | −2,316 | 8,106 | 8,259 | 1,761 | 11,852 | 6,927 | 11,718 |
| November | 8,511 | 1,525 | −4,129 | 4,708 | −3,109 | 4,817 | 3,047 | −5,842 |
| December | 9,918 | −2,086 | 14,848 | 2,956 | 6,533 | 5,317 | −363 | 2,584 |
| Total | 42,841 | 286 | 49,510 | 72,325 | 21,943 | 85,444 | 34,484 | 66,328 |

[1] From Aug. 1, 1955.

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN, FEB. 1 1951–DEC. 31, 1962

TABLE 9.—*Sample computation of energy gained at Roanoke Rapids due to predraw operation*

| (1) Date | (2) Initial elevation of Roanoke Rapids pond (feet msl) | (3) Storage space available "prior" to predraw [1] (dsf) | (4) Storage created by predraw (dsf) | (5) Reported inflow (dsf) | (6) Reported turbine use [2] (dsf) | (7) Total amount stored [2] (dsf) | (8) Amount stored in "prior" storage space (dsf) | (9) Amount remaining in "prior" storage space (dsf) | (10) Amount stored in "predraw" storage space (dsf) | (11) Theoretical spill (dsf) | (12) Predraw storage used for generation [3] (dsf) | (13) Unit output (kwh/dfs) | (14) Energy gain credited to predraw operation (mwh) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FEBRUARY 1957 | | | | | | | | | | | | | |
| 9 | 129.7 | 5,200 | 2,910 | 11,137 | 13,929 | 0 | 0 | 5,200 | 0 | 0 | | | |
| 10 | | | 3,835 | 9,611 | 13,446 | 0 | 0 | 5,200 | 0 | 0 | | | |
| 11 | | | | 20,612 | 14,358 | 612 | 612 | 4,588 | 0 | 0 | | | |
| 12 | | | | 25,723 | 19,506 | 5,723 | 4,588 | 0 | 1,135 | 0 | | | |
| 13 | | | | 22,883 | 19,446 | 2,883 | 0 | 0 | 2,883 | 0 | | | |
| 14 | | | | 18,430 | 19,425 | 0 | 0 | 0 | 0 | 0 | 1,570 | 121.3 | 190 |
| 15 | | | | 19,017 | 19,267 | 0 | 0 | 0 | 0 | 0 | 983 | 121.7 | 120 |
| 16 | | | | 10,676 | 12,804 | 0 | 0 | 0 | 0 | 0 | 1,465 | 127.2 | 186 |

[1] Below elevation 132.0.

[2] Amount stored is computed as the inflow less either 20,000 or the turbine use shown in column 6, whichever is greater. Amounts listed in column 6 do not otherwise enter into the computations.

[3] Computed as 20,000 less reported inflow until amount stored in "predraw" storage space has been used.

TABLE 10.—*Net monetary value of energy gains at Roanoke Rapids, Aug. 1, 1955–Dec. 31, 1962*

| | [1] 1955 | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 |
|---|---|---|---|---|---|---|---|---|
| Incremental cost of producing steam-electric energy: | | | | | | | | |
| Net generation at Chesterfield……1,000 kwh | 1,343,321 | 1,513,097 | 1,412,600 | 1,279,492 | 1,102,435 | 1,705,950 | 2,261,886 | 1,923,863 |
| 90 percent of fuel cost plus accounts 708 and 709 and prorated portion of 706 [2]……dollars | 4,341,424 | 5,224,869 | 5,202,923 | 4,656,202 | 3,879,200 | 5,250,471 | 6,677,472 | 5,985,757 |
| Unit incremental cost……mills/kwh | 3.232 | 3.453 | 3.683 | 3.639 | 3.519 | 3.078 | 2.952 | 3.111 |
| Incremental costs of generation at Roanoke Rapids: | | | | | | | | |
| Net generation at Roanoke Rapids……1,000 kwh | 120,672 | 240,904 | 380,119 | 426,738 | 316,488 | 421,903 | 357,892 | 412,385 |
| Account 722 and prorated portion of 719 [3]……dollars | 5,198 | 22,913 | 39,889 | 44,097 | 29,271 | 52,051 | 39,836 | 33,472 |
| Account 722 and prorated portion of 719 [3]……mills/kwh | 0.043 | 0.095 | 0.105 | 0.103 | 0.092 | 0.123 | 0.111 | 0.081 |
| License charge……do | 0.025 | 0.025 | 0.025 | 0.025 | 0.025 | 0.025 | 0.025 | 0.025 |
| Unit incremental cost……do | 0.068 | 0.120 | 0.130 | 0.128 | 0.117 | 0.148 | 0.136 | 0.106 |
| Net monetary value of energy gains: | | | | | | | | |
| Incremental cost of producing steam-electric energy……do | 3.232 | 3.453 | 3.683 | 3.639 | 3.519 | 3.078 | 2.952 | 3.111 |
| Incremental cost of generation at Roanoke Rapids……do | 0.068 | 0.120 | 0.130 | 0.128 | 0.117 | 0.148 | 0.136 | 0.106 |
| Unit value of energy gains……do | 3.164 | 3.333 | 3.553 | 3.511 | 3.402 | 2.930 | 2.816 | 3.005 |
| Energy gains at Roanoke Rapids (unmodified)……1,000 kwh | 42,841 | 286 | 49,510 | 72,325 | 21,943 | 85,444 | 34,484 | 66,328 |
| Predraw and head modifications……do | 0 | 1,076 | 3,059 | 166 | 1,717 | −887 | 3,826 | 4,776 |
| Net energy gains at Roanoke Rapids……do | 42,841 | 1,362 | 52,569 | 72,491 | 23,660 | 84,557 | 38,310 | 71,104 |
| Net value ($V_n$)……dollars | 135,549 | 4,540 | 186,778 | 254,516 | 80,491 | 247,752 | 107,881 | 213,668 |

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[1] August through December.

[2] Account 708—maintenance of boiler plant equipment; 709—maintenance of generating and electric equipment; 706—maintenance supervision and engineering. Since Jan. 1, 1961, costs reported under account Nos. 708, 709, and 706 have been reported under account Nos. 512, 513 and 514, and 510, respectively. Data for 1955–57 from VEPCO letter dated Nov. 23 1959, and for 1958–62 from VEPCO letter dated May 17, 1963.

[3] Account 722—maintenance of generating and electric equipment; 719—maintenance supervision and engineering. Since Jan. 1, 1961, costs reported under account No. 722 have been reported under account Nos. 544 and 545, and account 719 costs have been reported under account 541. Data for 1955–60 from FPC Forms 1, for 1961–62 from VEPCO letter dated May 17, 1963.

HEADWATER BENEFITS INVESTIGATION–ROANOKE RIVER BASIN

TABLE 11.—*Total annual costs of joint-use facilities allocated to power, Aug. 1, 1955–Dec. 31, 1962*

[Dollars]

| | 1955 | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 |
|---|---|---|---|---|---|---|---|---|
| **Philpott** | | | | | | | | |
| Capital costs of joint-use facilities allocated to power | 3,803,809 | 3,821,432 | 3,835,951 | 3,835,951 | 3,835,951 | 3,835,951 | 3,847,969 | 3,847,181 |
| Section 10(f) costs (interest, maintenance, and depreciation) [1] | [2] 62,345 | 151,736 | 157,921 | 152,670 | 151,724 | 163,747 | 158,313 | 155,350 |
| Insurance costs (0.10 percent) [3] | [2] 1,595 | 3,821 | 3,836 | 3,836 | 3,836 | 3,836 | 3,848 | 3,847 |
| Interim replacement costs [4] | [2] 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Operation costs [5] | [2] 4,771 | 13,965 | 19,470 | 16,477 | 15,311 | 20,777 | 22,843 | 19,785 |
| Total annual costs | [2] 68,711 | 169,522 | 181,227 | 172,983 | 170,871 | 188,360 | 185,004 | 178,982 |
| **Kerr** | | | | | | | | |
| Capital costs of joint-use facilities allocated to power | 38,900,202 | 39,277,927 | 39,497,508 | 39,524,657 | 39,539,305 | 39,558,526 | 39,599,463 | 39,601,419 |
| Section 10(f) costs (interest, maintenance, and depreciation) [1] | [2] 614,237 | 1,471,091 | 1,506,801 | 1,505,068 | 1,513,657 | 1,544,864 | 1,544,545 | 1,540,054 |
| Insurance costs (0.10 percent) [3] | [2] 16,307 | 39,278 | 39,498 | 39,525 | 35,539 | 39,559 | 39,599 | 39,601 |
| Interim replacement costs [4] | [2] 4,192 | 10,000 | 10,000 | 10,000 | 10,000 | 10,000 | 10,000 | 10,000 |
| Operation costs [5] | [2] 44,726 | 107,515 | 107,850 | 118,918 | 146,402 | 146,399 | 147,175 | 119,970 |
| Total annual costs | [2] 679,462 | 1,627,884 | 1,664,149 | 1,673,506 | 1,709,598 | 1,740,822 | 1,741,319 | 1,709,625 |
| **Philpott and Kerr** | | | | | | | | |
| Summation of total annual costs ($V_t$) | [2] 748,172 | 1,797,406 | 1,845,376 | 1,846,489 | 1,880,469 | 1,929,182 | 1,926,323 | 1,888,607 |

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[1] Taken from table 3.

[2] August through December.

[3] Estimate of Federal cost in lieu of actual insurance costs.

[4] Corps of Engineers, cost allocation reports, February 1956.

[5] Amounts obtained from Corps of Engineers in letters dated as follows:

1955, 1956—Mar. 7, 1957
1957—Feb. 1958
1958—Aug. 27, 1958, Jan. 19, 1959
1959—Aug. 3, 1959, Jan. 20, 1960
1960—July 20, 1960, Jan. 16, 1961
1961—Oct. 30, 1961, Oct. 11, 1963
1962—Oct. 11, 1963

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN

TABLE 12.—*Apportionment of annual costs to the Roanoke Rapids plant and proposed payments to the United States, Aug. 1, 1955–Dec. 31, 1962*

[Dollars]

| | 1955 | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 | Total |
|---|---|---|---|---|---|---|---|---|---|
| Net monetary value of energy gains at Roanoke Rapids | 135,549 | 4,540 | 186,778 | 254,516 | 80,401 | 247,752 | 107,881 | 213,668 | |
| Total annual costs of joint-use facilities allocated to power at Kerr and Philpott | 748,172 | 1,797,406 | 1,845,376 | 1,846,489 | 1,880,469 | 1,929,182 | 1,926,323 | 1,888,607 | |
| Total monetary value of energy gains | 883,721 | 1,801,946 | 2,032,154 | 2,101,005 | 1,960,960 | 2,176,934 | 2,034,204 | 2,102,275 | |
| Ratio of value of gains at Roanoke Rapids to the total value of energy gains | 0.15338 | 0.00252 | 0.09191 | 0.12114 | 0.04105 | 0.11381 | 0.05303 | 0.10164 | |
| Section 10(f) costs to be borne by power | 676,582 | 1,662,827 | 1,664,722 | 1,657,733 | 1,665,381 | 1,708,611 | 1,702,858 | 1,695,404 | |
| Apportionment of 10(f) costs to Roanoke Rapids | 103,800 | 4,100 | 153,000 | 200,800 | 68,400 | 194,500 | 90,300 | 172,300 | 987,200 |
| Adjustment for benefits to small plants below Philpott | | | | | | | | | 3,900 |
| Proposed payment to the United States by the Virginia Electric & Power Co. | | | | | | | | | 983,300 |

(DOCKET NO. E-6684) APPENDIX II

EXHIBIT No. 62

HEADWATER BENEFITS INVESTIGATION—ROANOKE RIVER BASIN

*Apportionment of annual costs to the Roanoke Rapids plant and proposed payments to the United States, Aug. 1, 1955–Dec. 31, 1962* [1]

[Dollars]

| | 1955 [2] | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 | Total |
|---|---|---|---|---|---|---|---|---|---|
| 1. Net monetary value of energy gains at Roanoke Rapids | 135, 549 | 4, 540 | 186, 778 | 254, 516 | 80, 491 | 247, 752 | 107, 881 | 213, 668 | |
| 2. Net monetary value of dependable capacity gains at Roanoke Rapids | 88, 656 | 211, 500 | 211, 500 | 211, 500 | 211, 500 | 211, 500 | 211, 500 | 211, 500 | |
| 3. Total monetary value of gains at Roanoke Rapids | 224, 205 | 216, 040 | 398, 278 | 466, 016 | 291, 991 | 459, 252 | 319, 381 | 425, 168 | |
| 4. Total annual costs of joint-use facilities allocated to power at Kerr and Philpott | 748, 172 | 1, 797, 406 | 1, 845, 376 | 1, 846, 489 | 1, 880, 469 | 1, 929, 182 | 1, 926, 323 | 1, 888, 607 | |
| 5. Total monetary value of power gains | 972, 377 | 2, 013, 446 | 2, 243, 654 | 2, 312, 505 | 2, 172, 460 | 2, 388, 434 | 2, 245, 704 | 2, 313, 775 | |
| 6. Ratio of value of gains at Roanoke Rapids to the total value of power gains | 0. 23057 | 0. 10730 | 0. 17751 | 0. 20152 | 0. 13441 | 0. 19228 | 0. 14222 | 0. 18376 | |
| 7. Section 10(f) costs to be borne by power | 676, 582 | 1, 622, 827 | 1, 664, 722 | 1, 657, 733 | 1, 665, 381 | 1, 708, 611 | 1, 702, 858 | 1, 695, 404 | |
| 8. Apportionment of 10(f) costs to Roanoke Rapids | 156, 000 | 174, 100 | 295, 500 | 334, 100 | 223, 800 | 328, 500 | 242, 200 | 311, 500 | 2, 065, 700 |
| 9. Adjustments for benefits to small plants below Philpott | | | | | | | | | 3, 900 |
| 10. Proposed payment to the United States by the Virginia Electric & Power Co | | | | | | | | | 2, 061, 800 |

[1] Using energy gains and values from exhibit No. 1A plus annual dependable capacity gains of 9,000 kw at $23.50 per kilowatt at Roanoke Rapids.

[2] August through December.

### (DOCKET NO. E-6684) APPENDIX III

### EXHIBIT 16 (SOUTHEASTERN POWER ADMINISTRATION, DEPARTMENT OF THE INTERIOR)

*Roanoke Rapids plant, net monetary value of power gains and resulting assessments*

| | 1955 | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 | 1962 | Total |
|---|---|---|---|---|---|---|---|---|---|
| A. Net monetary value of energy gains: | | | | | | | | | |
| 1. Energy gains as estimated by FPC Staff..................mwh.. | 42,841 | 1,362 | 52,569 | 72,491 | 23,660 | 84,557 | 38,310 | 71,104 | 386 894 |
| 2. Predraw energy credits to be added..................mwh.. | .......... | 1,156 | 289 | 578 | 1,445 | 1,445 | 2,312 | 1,734 | 8,959 |
| 3. Total energy gains..................mwh.. | 42,841 | 2,518 | 52,858 | 73,069 | 25,105 | 86,002 | 40,622 | 72,838 | 395,853 |
| 4. Unit value of energy gains..................mills/kwh.. | 3.164 | 3.333 | 3.553 | 3.511 | 3.402 | 2.930 | 2.816 | 3.005 | .......... |
| 5. Net monetary value of energy gains to VEPCO.........dollars.. | 135,549 | 8,392 | 187,804 | 256,545 | 85,407 | 251,986 | 114,392 | 218,878 | 1,258,953 |
| 6. Net monetary value of energy gains to FPC at .025 mills/kwh dollars.. | 1,071 | 63 | 1,321 | 1,827 | 628 | 2,150 | 1,016 | 1,821 | 9,897 |
| B. Net monetary value of dependable capacity gains: | | | | | | | | | |
| 1. Dependable capacity gains: | | | | | | | | | |
| (a) Based on Kerr dependable capacity criteria..............kw.. | 35,000 | 35,000 | 35,000 | 35,000 | 35,000 | 35,000 | 35,000 | 35,000 | .......... |
| (b) Based on FPC Form 12 dependable capacity criteria...kw.. | 17,000 | 17,000 | 17,000 | 17,000 | 17,000 | 17,000 | 17,000 | 17,000 | .......... |
| 2. Unit value of capacity gains..................dollars/kw.. | 23.50 | 23.50 | 23.50 | 23.50 | 23.50 | 23.50 | 23.50 | 23.50 | .......... |
| 3. Net monetary value of capacity gains: | | | | | | | | | |
| (a) Based on Kerr dependable capacity criteria.........dollars.. | [1] 68,540 | 822,500 | 822,500 | 822,500 | 822,500 | 822,500 | 822,500 | 822,500 | 5,826,040 |
| (b) Based on FPC Form 12 dependable capacity criteria dollars.. | [1] 33,290 | 399,500 | 399,500 | 399,500 | 399,500 | 399,500 | 399,500 | 399,500 | 2,829,790 |
| C. Net monetary value of power gains to VEPCO and resulting assessments: | | | | | | | | | |
| 1. Net value of total power gains: | | | | | | | | | |
| (a) Utilizing Kerr dependable capacity criteria.........dollars.. | 204,089 | 830,892 | 1,010,304 | 1,079,045 | 907,907 | 1,074,486 | 936,892 | 1,041,378 | 7,084,993 |
| (b) Utilizing FPC Form 12 dependable capacity criteria dollars.. | 168,839 | 407,892 | 587,304 | 656,045 | 484,907 | 651,486 | 513,892 | 618,378 | 4,088,743 |
| 2. Resulting assessment to VEPCO: | | | | | | | | | |
| (a) Utilizing Kerr dependable capacity criteria.........dollars.. | 145,000 | 513,000 | 589,000 | 611,400 | 542,300 | 611,200 | 557,200 | 602,600 | [2] 4,185,000 |
| (b) Utilizing FPC Form 12 dependable capacity criteria dollars.. | 124,600 | 300,200 | 401,900 | 434,600 | 341,400 | 431,300 | 358,600 | 418,200 | [2] 2,799,600 |

[1] Monetary evaluation of dependable capacity gains begun on Dec. 1, 1955. [2] Adjusted for benefits to small plants below Philpott.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## ALABAMA POWER COMPANY, PROJECT NO. 2146

### ORDER APPROVING REVISED EXHIBIT K DRAWINGS FOR PROJECT AND FIXING ANNUAL LAND CHARGES

(Issued February 20, 1967)

On July 26, 1965 and January 18 and February 2, 1967, Alabama Power Company, licensee for Project No. 2146, filed for Commission approval revised Exhibit K drawings and an Exhibit F showing and describing the project boundary and project lands therein pertaining to the now completed Logan Martin development of the project. The filings were submitted pursuant to license Article 29. Project No. 2146 is situated on the Coosa River, Alabama, and affects lands of the United States. Commission approval of the Exhibit F is not required.

The principal effects of our approval of the Exhibit K drawings will be the determination of the lands occupied by the project insofar as the Logan Martin development is concerned, and of the amount of annual charges for occupancy of lands of the United States.

*The Commission finds:*

(1) The following described revised Exhibit K drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project:

| Exhibit K map | FPC No. 2146- | Showing | Exhibit K map | FPC No. 2146- | Showing |
|---|---|---|---|---|---|
| A | 237 | Project area—Logan Martin Reservoir. | 45 | 248 | Project area—Logan Martin Reservoir |
| 35 | 238 | Do. | 45A | 249 | Do. |
| 36 | 239 | Do. | 45B | 250 | Do. |
| 37 | 240 | Do. | 47 | 251 | Do. |
| 38 | 241 | Do. | 48 | 252 | Do. |
| 39 | 242 | Do. | 49 | 253 | Do. |
| 40 | 243 | Do. | 50 | 254 | Do. |
| 41 | 244 | Do. | 51 | 255 | Do. |
| 42 | 245 | Do. | 55 | 256 | Do. |
| 43 | 246 | Do. | 56 | 257 | Do. |
| 44 | 247 | Do. | | | Do. |

(2) The following described license Exhibit K drawings which have been superseded wholly or in part should be eliminated from the license for the project to the extent indicated herein:

| *FPC No. 2146* | *Superseded by FPC No. 2146* | *FPC No. 2146* | *Superseded by FPC No. 2146* |
|---|---|---|---|
| 43 [1] | 238 | 56 deleted | --- |
| 44 [1] | 238 | 57 deleted | --- |
| 45 | 239 | 58 | 251 |
| 46 [1] | 240 | 59 | 252 |
| 47 | 241 | 60 | 253 |
| 48 | 242 | 61 | 254 |
| 49 | 243 | 62 | 255 |
| 50 | 244 | 63 deleted | --- |
| 51 | 245 | 64 deleted | --- |
| 52 | 246 | 65 deleted | --- |
| 53 | 247 | 66 deleted | --- |
| 54 | 248 | 67 [1] | 256 |
| 55 deleted | --- | 68 | 257 |

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[1] Superseded only insofar as it shows portions of the Logan Martin development.

(3) The amount of annual charges to be paid under the license for the project for the use, occupancy, and enjoyment of the United States lands by the Logan Martin development of the project (133.54 acres) is reasonable as hereinafter fixed and specified.

*The Commission orders:*

(A) The revised Exhibit K drawings described in finding (1) above are hereby approved as part of the license for Project No. 2146, and the license Exhibit K drawings described in finding (2) above are hereby eliminated from the license for the project to the extent indicated in the finding.

(B) Article 28 of the license for the project is hereby modified to substitute for subparagraph (ii) of the article the following subparagraph (ii):

> (ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, $320.50.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64-1, ET AL. AND AREA RATE PROCEEDING, ET AL., (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.

### ORDER DENYING MOTIONS TO OMIT INTERMEDIATE DECISIONS

(Issued February 20, 1967)

On January 16, 1967, the Associated Gas Distributors (AGD) and Certain Eastern Distributors (CED) moved pursuant to the provisions of Sections 1.30(c)(3) and 1.12(c) of the Commission's Rules of Practice and Procedure that the intermediate decisions in these proceedings be omitted. They are supported by the California Distributors Group and the Commission staff. Various producer Respondents oppose omission of the intermediate decisions.

The major arguments in support of the motions to omit are (1) that this will advance the time of the final rate determinations and any refunds which this Commission might order and (2) that omission will allow the Commission to consider these two proceedings concurrently with the Southern Louisiana Area Rate Case, Docket No. AR61-2. The three proceedings cover approximately 70% of all jurisdictional sales. Movants assert the basic issues in the area ratemaking have already been decided,[1] and affirmed as to their essential aspects,[2] so that intermediate decisions are not as necessary as they previously were.

We share with movants a recognition of our duty expeditiously to assure that "complete, permanent and effective bond of protection from excessive rates and charges" to which consumers are entitled. *Atlantic Refining Co. v. Public Service Commission of New York*, 360 U.S. 378, 388. However, as we did in the

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[1] *Permian Basin Area Rate Proceeding*, Opinion No. 468, 34 FPC 159 (August 5, 1965).

[2] *Skelly Oil Company v. F.P.C.*, 375 F. 2d 6 (CA10–1967).

Southern Louisiana Area Rate Proceeding,[3] we feel here that we would be benefited in our decisional process by having the aid of the Examiners' decisions. Moreover, the Examiners are familiar with the complex and lengthy records of these cases, including the further evidence and arguments on issues which Opinion No. 468 said merited further development and in view of this familiarity their initial decisions could be expected to be available at an early date; accordingly the additional delay, if any, should be minimal.

Accordingly, the Commission denies the motions for omission of the intermediate decisions in these proceedings.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

I dissent to the order denying the motions to omit the intermediate decisions in the *Hugoton-Anadarko* and *Texas Gulf Coast* proceedings. In so doing, I confess that several years ago when I was confronted with a similar motion to omit the examiner's decision in the *Southern Louisiana* proceeding, I voted not to do so. I did so primarily to see whether the rational expressed in *Permian* would be equally applicable in another area. Apparently, Examiner Zwerdling either felt bound to follow the Commission's approach or found little with which to disagree.

We are faced today with an entirely different situation. The time for experimentation is now a luxury that neither the industry nor the consumers can afford. We have a decision upholding much of the legal and policy framework of the Commission's *Permian* approach. The Commission has the unique opportunity of considering almost simultaneously three additional area rate cases which would cover an additional 70 percent of the interstate sales under the just and reasonable regulatory standard of the Natural Gas Act.

The opportunity for the Commission to quickly bring an end to the uncertainty that vexes everyone is before us. Surely, we cannot proceed on an *ad hoc*, case-by-case basis forever. The possibility of dealing simultaneously with the three pending cases puts this Commission in a unique position to consider the overall problems affecting area ratemaking in broad context which could permit the establishment of more generally applicable standards. The momentous problems involved in producer regulation can be solved, but only if we are willing to do the unusual, such as bypassing the examiner's decision in order to gain a broad perspective. As much as I dislike omission of the examiners' decisions as a general rule, this is the exception that proves the rule.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## JACK PROPERTIES, INC., DOCKET NOS. G-17344 AND G-17426

### ORDER ACCEPTING OFFERS OF SETTLEMENT, SEVERING AND TERMINATING PROCEEDINGS AND REQUIRING REFUNDS

(Issued February 20, 1967)

On December 27, 1966, Jack Properties, Inc. (Respondent) filed offers of settlement in these proceedings, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving sales of natural gas which were made by it to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (TGP) from the Morales Field, Jackson County, Texas under its FPC Gas Rate Schedule No. 2, and from the Tolson Field, Victoria County, Texas under its FPC Gas Rate Schedule No. 3 (each in Texas Railroad Commission District No. 2). Sales under each of said rate schedules have ceased, and abandonment authorization has been granted by the Commission.

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[3] Docket No. AR61-2, *Order Denying Motion to Omit Intermediate Decision, and Alternate Request for an Interim Order, But Granting Other Relief*, 35 FPC 1332 (November 19, 1965).

In its proposals Respondent offers to make refunds to TGP in accordance with the formula set forth by the Commission in *Jack W. Grigsby* (Operator), *et al.*, Docket Nos. RI61–96 and RI62–536, 32 FPC 529. In accordance with the *Grigsby* refund formula Respondent will refund to TGP 25% of all revenues collected subject to refund during 1959 and 1960, and 70% of such revenues collected during 1961 and 1962, with applicable interest, above the proposed settlement rates of 13.78069¢ per Mcf of natural gas at 14.65 psia. (The proposed settlement reflect a 0.21931¢ per Mcf dehydration charge deduction). The amount of refunds will total approximately $9,100, exclusive of interest.

*The Commission finds:*

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by Respondent on December 27, 1966, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

*The Commission orders:*

(A) The offers of settlement filed with the Commission by Respondent on December 27, 1966, are hereby approved in accordance with the provisions of this order.

(B) Respondent shall compute the difference between the rates collected subject to refund and the settlement rate of 13.78069¢ per Mcf of natural gas at 14.65 psia, with applicable interest to the date of this order, and shall within 30 days from the date of issuance of this order make such refunds to TGP, and ten days thereafter submit a report to the Commission setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, with TGP's written concurrence and receipt thereof.

(C) Upon notification by the Secretary of the Commission that Respondent has complied with the terms and conditions of this order the proceedings in Docket Nos. G–17344 and G–17426 shall be severed from the consolidated proceeding, Docket No. AR64–2, and will terminate without further order of the Commission.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. G–13002

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 20, 1967)

On December 12, 1966, United Gas Pipe Line Company (Applicant), filed in Docket No. G–13002 a petition to amend the order issued in said docket on January 3, 1958, 19 FPC 31, by requesting authorization to increase the deliveries of volumes of natural gas to the Sterlington Power Plant of the Louisiana Power & Light Company (Louisiana Power), all as more fully set forth in the petition to amend.

By the order issued on January 3, 1958, in the instant proceeding Petitioner was authorized to construct and operate certain facilities and to make limited delivery of quantities of natural gas to the Sterlington Plant of Louisiana Power, such deliveries being limited to 18,250,000 Mcf per year.

The Commission's order issued April 13, 1965, 33 FPC 784, in Docket No. G–13002, authorized United to deliver, for the year 1965 only, 18,872,000 Mcf in accordance with the December 11, 1964, amendatory agreement between the two parties.

In a letter dated November 11, 1966, Louisiana Power advised United that it was necessary to revise its estimated 1966 annual fuel requirements for its Sterlington Plant to approximately 19,000,000 Mcf. An amendatory agreement dated November 30, 1966, was executed between the two parties which increased the maximum daily quantity to 55,000 Mcf with a corresponding annual quantity of 20,075,000 Mcf.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on December 30, 1966 (31 F.R. 16738). No protest or petition to intervene has been filed concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 3, 1958, in Docket No. G–13002 be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued January 3, 1958, in Docket No. G–13002 is amended so as to authorize Petitioner to deliver up to 55,000 Mcf daily and 20,075,000 Mcf annually to Louisiana Power & Light Company, as requested by Petitioner in subject petition to amend.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING, ET AL. (OTHER SOUTHWEST AREA). DOCKET NO. AR67–1, ET AL.

### ORDER INSTITUTING AREA RATE PROCEEDING

(Issued February 28, 1967)*

On September 28, 1960, the Commission in its decision in the *Phillips* case (24 FPC 537), and its Statement of General Policy No. 61–1 (24 FPC 818), stated that it proposed to fix just and reasonable rates for independent producers of natural gas on an area basis. Since that time four area rate proceedings have been instituted. The Permian Basin proceeding (Docket No. AR61–1) has been decided by the Commission and a decision was rendered on appeal by the

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*See order re motions for reconsideration and clarification issued April 26, 1967, 37 FPC 807.

United States Court of Appeals for the Tenth Circuit on January 20, 1967, in which the Commission's decision was affirmed in part and remanded on certain issues.[1] The hearing in the Southern Louisiana proceeding (Docket No. AR61–2) has been concluded and the Presiding Examiner has rendered his intermediate decision. The hearings in the Hugoton-Anadarko (Docket No. AR64–1) and the Texas Gulf Coast (Docket No. AR64–2) proceedings have also been concluded. These area proceedings will establish just and reasonable rates for about 79% of gas sales in interstate commerce, based on 1962 sales.

By this order we initiate a proceeding to determine just and reasonable rates for the Other Southwest Area described in Appendix A hereto. Sales in this area in 1962 accounted for approximately 14% of total sales in that year, so that upon conclusion of that proceeding rates will have been established for about 93% of the natural gas sold in interstate commerce. The remaining 7% of sales which are in widely scattered areas will be treated separately from this proceeding.

The parties have had an opportunity in the current Hugoton-Anadarko and Texas Gulf Coast proceedings to present evidence directed not only to the principles enunciated in the Permian Basin decision but also to the questions raised in that decision on which other evidence was invited. Thus, presumably there exists in the record of these proceedings extensive evidence with respect to current gas costs, demand-supply conditions, reserve-production ratios, nationwide flowing gas costs, allocation methods and other similar matters, much of such evidence substantially duplicating that presented in the Permian and Southern Louisiana records. No good reason exists for a re-trial or further duplication of this evidence in the proceeding being initiated by this order. Accordingly, the Presiding Examiner is directed to incorporate by reference all the evidence adduced in the joint record in the Hugoton-Anadarko—Texas Gulf Coast proceedings (and may permit incorporation by reference to the Permian and Southern Louisiana proceedings) provided that specific portions of the joint record may be excluded upon a clear showing of irrelevance or immateriality. Evidence may be presented on any new issues not raised in the joint record and witnesses may supplement data presented or opinions expressed in the joint record but cumulative or repetitive direct evidence, cross-examination or rebuttal shall not be permitted. It is our intention that, absent new evidence, the same issues shall not again be tried in this proceeding but that non-repetitive testimony or cross-examination be allowed by any of the parties on new issues or respecting matters incorporated by reference. This would include theoretical concepts related to issues applicable to the instant areas. This proceeding essentially should require and be limited to new evidence respecting area conditions, area costs, and rate design.

The length of prior area rate proceedings has been a matter of concern to the Commission. These proceedings have imposed a heavy burden upon respondents and intervenors as well as upon the Commission staff. While we are aware that the institution of a new proceeding will require continued attention of the parties, we are confident that the experience gained in the past and pending proceedings will do much to expedite the hearings herein and lighten the burden of all parties concerned. The new procedures we are providing for should likewise serve this objective.

The basic data respecting area costs are obtainable from the All Areas Questionnaire issued by Commission letter-order of October 30, 1963, 30 FPC 1155.

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[1] The Commission intends to request the Solicitor General to seek Supreme Court review on behalf of the Commission.

At the request of a number of Questionnaire respondents, however, the Commission, by orders issued January 9, 1964, and June 12, 1964, 31 FPC 34, 1541, indefinitely deferred the requirement to furnish certain data including that involving gathering and processing costs in the subject area. It is now appropriate that the gathering and processing data be furnished for the Other Southwest area and we are accordingly today terminating the deferral of the submission of such data. While we would normally require submission of questionnaire data within four months, we have extended the period to eight months in order that the parties may have the opportunity at the prehearing conference to consider stipulations or agreements as to gathering and processing costs to be utilized in the proceedings. If, after the initial prehearing conference, the Presiding Examiner reports to the Commission that agreement has been reached which may make it unnecessary to obtain the deferred data as required by the order referred to, the Commission will then reconsider the order. If no such agreement or other satisfactory disposition is reached, the respondents will proceed to furnish the data in accordance with the order.

To expedite the proceedings at the prehearing conference and the disposition of data requests, any parties interested in making data requests or in receiving copies of such requests made by others shall so advise the Secretary of the Commission within four weeks of the date of the order instituting this proceeding. The Secretary will then prepare a preliminary service list of such parties and this list will be available to all parties requesting the same.

This proceeding, like the Permian and pending proceedings, will result in the establishment of just and reasonable rates under Sections 4(e) and 5(a) of the Act applicable to all persons making sales of gas in interstate commerce from the production areas delimited herein. These persons are listed in Appendix B attached hereto and are made respondents in this proceeding.

A number of pipeline companies make purchases in the producing areas covered by this proceeding. The Commission has recognized that pipeline purchasers are directly concerned with the determinations which the Commission makes in area rate proceedings (See 29 FPC 981, 983). The contracts which have heretofore or will hereafter be entered into by pipeline companies for the purchase of gas in this area are subject to examination and review by the Commission. Consequently it is appropriate that these pipeline purchasers be made respondents in this proceeding. In Appendix C are listed the pipelines making purchases in the area covered by this proceeding.

This proceeding will also establish the refunds, if any, which may be required under Section 4 of the Natural Gas Act, and all proceedings involving increased rate filings suspended by the Commission for sales in the area will be consolidated in this proceeding. A list of the pending proceedings is set forth in Appendix D hereto.

Three weeks prior to the initial prehearing conference all data requests shall be served on the parties on the preliminary service list. At the initial prehearing conference all proposals for stipulations as to gathering and processing costs and all other requests for data previously made shall be considered and disposed of by the Presiding Examiner. At the initial and subsequent prehearing conferences which the Presiding Examiner may schedule, consideration should be given to the incorporations by reference herein required and such other matters as may be deemed relevant to expedite conclusion of this proceeding.

*The Commission orders:*

(A) A proceeding is hereby instituted pursuant to Sections 4, 5, 10, 14, 15 and 16 of the Natural Gas Act to determine the just and reasonable rate or rates for the sales of natural gas subject to the jurisdiction of the Commission produced in the geographical areas designated in Appendix A and public hearings shall be held in this proceeding as determined by the Presiding Examiner. All persons named in Appendix B hereto and all parties on whose behalf such persons have filed FPC gas rate schedules for sales in such areas are hereby made respondents herein.

(B) All pipeline purchasers named in Appendix C hereto are hereby made respondents herein.

(C) The proceeding hereinbefore instituted shall also encompass the investigation of facts, conditions, practices, or matters relating to the sale of natural gas produced in said geographical area to aid in the enforcement of the provisions of the Act or in prescribing rules and regulations thereunder, and shall also encompass issues as to whether any rate or charge demanded, observed, charged or collected by any natural gas company in connection with such sales is unjust, unreasonable, unduly discriminatory or preferential.

(D) The Section 4 proceedings listed in Appendix D are hereby consolidated for purposes of hearing with the proceeding herein instituted.

(E) Any person other than the respondents specifically named in Appendices B and C who desires to participate as intervenor in the hearings designated hereinabove ordered to be held, shall, on or before March 28, 1967, file a notice of intervention or petition to intervene with the Secretary of the Commission in accordance with Section 1.8 of the Commission's Rules of Practice and Procedure.

(F) All respondents or intervenors making data requests or wishing to have such requests served upon them shall so notify the Secretary of the Commission on or before March 28, 1967.

(G) A prehearing conference shall be held pursuant to the Commission's Rules of Practice and Procedure in a Hearing Room of the Commission at 441 G St., NW., Washington, D.C., commencing at 10:00 a.m., June 28, 1967 before a hearing examiner designated to act as the presiding examiner in this proceeding for the purpose of but not limited to affording all interested persons an opportunity to be heard with respect to the procedures to be followed in expeditiously determining the issues to be tried in these proceedings. At the conclusion of the prehearing conference or as soon thereafter as may be feasible, the Presiding Examiner shall set the dates for the service of testimony and exhibits by the staff, parties and interveners, and the date for commencement of the hearing and cross-examination.

(H) Howell Purdue, a duly qualified and appointed hearing Examiner, or any officer or officers of the Commission designated by the chief hearing Examiner for that purpose (See Delegation of Authority, 18 CFR 3.5(d), etc.) is designated to act as Presiding Examiner in this proceeding as of the date of the issuance of this order and is authorized and directed in so doing to exercise all of the functions and authority prescribed by the Administrative Procedure Act and the Commission's Rules of Practice and Procedure, including the holdings of the above scheduled prehearing conference and such other prehearing conferences as he may deem advisable to expedite the proceeding herein.

(I) A copy of this order shall be published in the FEDERAL REGISTER and served upon each of the respondents set out in Appendices B and C and upon interested State Commissions as is provided for in Section 1.19 of the Commission's Rules of Practice and Procedure.

Commissioner Ross *dissenting.*

### APPENDIX A—DOCKET NO. AR67-1, ET AL.

The Other Southwest Area comprises:

(a) The State of Mississippi;

(b) In the State of Alabama: Marion, Fayette, Lamar and Pickens Counties;

**(c) The State of Louisiana, north of the 31° degree parallel;**

**(d) In the State of Texas; Texas Railroad Commission District Nos. 5, 6 and 9;**

**(e) In the State of Oklahoma; Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Delaware, Garvin, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Mayes, Murray, Muskogee, Noble, Nowata. Okfuskee, Oklahoma, Okmulgee, Osage Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Stephens (Except Carter-Knox Area), Tillman, Tulsa, Wagoner, Washington, Pottawatomie, Pushmataha, Rogers, Seminole and Sequoyah Counties;**

**(f) The State of Arkansas.**

## APPENDIX B—DOCKET NO. AR67-1, ET AL.

## RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67-1, ET AL.

**J. S. Abercrombie Mineral Company**
**Adams, N. L., Sr.**
**Alexander, C. W.**
**Alexander, E. B., Jr.**
**Allied Materials Corporation**
**Alston, Francis H.**
**Amax Petroleum Corporation**
**A'Mell Oil Properties**
**Amerada Petroleum Corporation**
**Americana Oil & Gas Properties of Texas, Inc.**
**American Exploration Development Corporation**
**American Petrofina, Inc.**
**American Petrofina Company of Texas**
**American Realty and Petroleum Corporation**
**American Trading and Production Corporation**
**Amigos Oil & Gas Ventures**
**Anadarko Production Company**
**An-Son Corporation**
**Anderson, Jacqueline**
**Anderson Petroleum**
**Andrewski, H. C.**
**Anisman, M., Trustee**
**Anisman, Morris**
**Apache Corporation**
**Apco Oil Corporation**
**Argo, M. M.**
**Arkla Exploration Company**
**Arrington, J. H.**
**Ascher, M.**
**Ashland Oil & Refining Company**
**Athens, E. J.**
**Atkins, Katherine Adger**
**Atlantic Richfield Company**
**Austral Oil Company Inc.**
**B and A Pipe Line Company**
**Bailey, Virginia Mitchell**
**K. Baker, Receiver**
**Bander, Joe**
**Barker, Walter L.**
**Barnes, Earl E.**
**Barnwell Debardeleben Oil Company**
**Barnwell and Kinzler**
**Barnwell Inc.**
**Barnwell Production Company**
**Barrett, Charlotte Osborn**
**Basin Operating Company**
**Bass, Harry W.**
**Baton, J. W.**
**Thelma Bauerdorf and Constance Cartwright Trustees for George F. Bauerdorf, Deceased**
**Beacon Oil & Refining Company**
**Beall, Alton G.**
**Beard Oil Company**
**Beckett, C. M.**
**Behring's Production Company, Inc.**
**Belgam Oil Company, Inc.**
**Berry, Thomas E.**
**Thomas N. Berry and Company**
**Biedenharn, Betty Osborn**
**Big Chief Drilling Company**
**Biggs, Robert A., Jr.**
**Biglane, D. A.**
**Blackburn Gasoline Plant**
**Blair, B.B.**
**Bodcaw Company**
**Bohnsack, Richard L.**
**Bond, Durbin**
**Bond Oil Corporation**
**Bond, Roland S.**

### APPENDIX B—DOCKET NO. AR67–1, ET AL.—Continued

### RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67–1, ET AL.—Continued

Borden, S. P.
Boteler, R. H.
Boteler, R. T.
Bracken Oil Company
Brandenburg, R. P.
Breckenridge Gasoline Company
Brian, C. A.
Bridewell, Billy
Brightwell, Donald
Briscoe, Powel
Powel Briscoe Inc.
Briscoe, Roy E.
Bristol, R. A.
Brooks, Jesse M.
Brooks, Jesse M. & M. James Brooks
Zach Brooks Drilling Company
Brown, George R.
Brown, L. D. and Trant, Sam
Broyles, C. W.
Broyles, Harvey
Bryant, W. H.
Buckwalter, Charles F.
Burk Gas Corporation
Burk Royalty Company
Burnett, T. C. and Ruby C., Estate
Burnham, Joe M.
Burns, L. T., Estate
Burns, R. G.
Burns, R. H.
Burton, C. P.
Butler, J. R.
C. F. and H. Oil Company, Inc.
Caddo Pine Island Corporation
California Company, a Division of Chevron Oil Company, The
Inez Calmes Executrix of the Estate of Kermit W. Calmes, Deceased
Calto Oil Company
Calvert-Mid American Inc.
Cameron, A. A., d/b/a Cameron Oil Company
George E. Cameron Inc.
Canary, S. C.
Cararas, Jerome A.
Caraway, Reagan J.
Cargill, Robert
Carpenter, E. M.
Carter-Jones Drilling Company, Inc.
Caruthers, J. D.
Car-Tex Producing Company
Caruthers Operating Company, Inc.
Carver, Mrs. Helen, d/b/a Anthony Oil Company
Casey, Carl
Caska Corporation
Cassard, A. R.
J. G. Catlett Company
Central Commercial Company
Central Oil Company
Champlin Petroleum Company
Chapman, Harry Allen
Chastain, M. B.
Chicago Mill & Lumber Company
Chisholm, Alexander F.
A. F. Chisholm, d/b/a The Brandon Company
Cities Service Company
Cities Service Oil Company
Citizens Bank of Hattiesburg, Mississippi
Claiborne Gasoline Company
Clark, Anson L.
Clark and Cowden
Clark, F. A.
Clay, Thomas W.
Cleary Petroleum Inc.
Claud, Robert E.
Coastal States Gas Producing Company
Coats, Alton
Cochran, Phil K.
Coffield, H. H.
Cohen, Don
Coles, Marvin J.
Coles, Otis C., Jr.
Collins, George Fulton, Jr.
Colpitt, James R.
Columbian Fuel Corporation
Comegys, W. M., Jr.
Commercial Solvents Corporation
Compadre Oil Corporation
Consolidated Oil & Gas Inc. (Colo.)
Continental Oil Company
Cook, Tom, Jr.
Cook, William H.
Corban, Charlie
Cotton, Doyle W., Jr.
Cotton Valley Community

## APPENDIX B—DOCKET NO. AR67-1, ET AL.—Continued

### RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67-1, ET AL.—Continued

Coulston Drilling Company
Coutant, A. E.
Cox, Edwin L.
Crescent Drilling Company, Inc.
Creslenn Oil Company
Crestmont Oil Company
Crest Petroleum Inc., Agent
Crichton, John H.
Criner Processing
Crockett, M. W. and Charles Kelly, d/b/a Crockett & Kelly
Crow, Mrs. Cordelia K.
Crow, David, Trustee
Crow Drilling and Producing Company
Milton Crow Inc.
Crystal Oil & Land Company
Culpepper, Curtis
Curry, W. C.
Cuttychamp Oil & Gas Corporation
Cyprus Mines Corporation
Dal-Rock Production Company
Darby, Beulah K.
Daube, Olive H., d/b/a Daube Company
Davidor & Davidor, Inc.
Davis, C. D.
Davis, Paul R.
Davis, Waymon L.
Davon Drilling Company
Debardeleben, Charles F., Jr.
Dees, M. H.
Delaney, W. A., Jr.
Delhi Taylor Oil Corporation
Delta Drilling Company
Delta Gulf Drilling Company
Deposit Guarantee Bank & Trust Company
Despot, George J.
Dial, J. B.
Discovery Oil & Gas Company, Inc.
Dorchester Gas Production Company
Dorfman, Elizabeth F., Trust
Dorfman, Louis
Dorfman, Sam Y., Jr.
Draughn, Paul V., Jr.
Draughn, Paul V., Sr.
Dunbar, Blaine
N. V. Duncan Drilling Company
Estate of N. V. Duncan
Duncan, Walter
Dunford, O. D.
E. Dunlap, Jr. & State Oil Company
Eason Oil Company
Everett Eaves
Ward M. Edinger Inc.
Edwards, Roberts J., Jr.
Elledge, Vernon and Hall
Ells, H. A., d/b/a All Star Gas Company
Elm Grove Gathering System Inc.
Erickson, E. L.
Evans, James P., Jr.
Fagadau, Sanford P.
Fair Oil Company
Fairfield Oil Company
Falcon Seaboard Drilling Company
Feazel, W. C., Estate
Felsenthal, S. J., Estate
Fender, Harris R.
Ferguson, Hershal C.
Ferguson Oil Company Inc.
Fields, Bert Estate
Fleet, Howard W.
Flesh, David J.
Florsheim, S. L.
Fohs, Julius F., Estate of
Fontaine, W. B.
Ford, Evon A.
Helen H. Feldman, Gertrude M. Reilly and Raymond J. Gertz, Trustees, Estate of Joseph Feldman
Forest Oil Corporation
Forgey R.
Forgotson, James M.
Foster, W. H.
Four States Drilling Company, Inc.
Franks, John
Franks Petroleum
John N. Free, d/b/a Free Lichty Drilling Company
Joseph F. Fritz
Fryer and Hanson Drilling Company
Gage, Coke L.
Gammill, Dave
Gant, Walter H.
Garrett, J. M.
Gas Rock Corporation

### APPENDIX B—DOCKET NO. AR67-1, ET AL.—Continued

### RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67-1, ET AL.—Continued

Gas Transmission Company
Genecov, A. S., Trustee
General American Oil Company of Texas
Genere Gas Industries Inc.
Geochemical Surveys
Geological Exploration Company
Gerhig Company of Arkansas
Gibbons, Ed
Gilbert, Arch B.
Gilmer Oil Company
Glassell, A. C.
Glassell, Alfred C., Jr.
Glassell and Glassell
Glen Rose Gasoline Company
Godfrey, Roy A.
Goins, J. I.
Gose, Steve
Gragg Drilling Company
Graokla Gas Corporation
Graridge Corporation of Texas
Graves, A. R.
Graves, A. R. and Wetzel, Guy
Greenbaum, R. R., d/b/a Time Petroleum Company
Greenville Gasoline Company, Inc.
Grigsby, Jack W.
Grimes, Otha H.
Gulf Mobile and Ohio R. R. Company
Gulf Natural Gas Corporation
Gulf Oil Corporation
H & H Oil & Gas Corporation
Hall, Frank J.
Hall, G. C.
Hall, Stanton A.
Hamill, Claud B.
Hamilton Gas Company
Hamman, Blake
Hamon, Jake L.
Hansbro, M. G.
Estate of M. G. Hansbro
Harden, Jack
Hardey, Charles O.
Hargrave, Horace C.
Harper Oil Company
Harris, James W.
Harrison, Wallace
Harvey, W. W. & Sojourner, W. C.
Hawkins, H. L. & H. L., Jr.
Hayes, Marshall A., Jr.
Heape, Gene
Hearnsberger, H. G.
The Hefner Company
Hefner, Robert A., Jr.
Heidelberg, Cecil F., Jr.
Roy Heidelberg II
Heldt, James D.
Helmerich and Payne Inc.
Henry, S. O., Jr.
Herold, Simon
Maxwell Herring Drilling Corporation
Hewell, W. A., Trustee
Hibbert, R. E., Agent
Hilburn, C. A.
Hinton, Charles A.
Hinton Producing Company
Hodge, T. F.
A. J. Hodges Industries Inc.
Hodges, R. M.
Hoffman, L. C.
Mrs. Luna T. Holcomb
Hollandsworth, G. J.
Hollandsworth and Travis
Holleman, Wilbur J.
Hollyfield and McFarlene
Home-Stake Production Company
Hood, F. M.
Hooper, S. J.
Houston Royalty Company
J. M. Huber Corporation
Huffines, V. R.
Dudley, J. Hughes
Hughey, W. R.
Hughey, W. R., Operating Company
Humble Oil & Refining Company
Hunt, H. L.
Haroldsen L. Hunt, Jr., Trust Estate
Hassie Hunt Trust
Hunt Industries
Lamar Hunt
Lamar Hunt Trust Estate
Hunt, Nelson Bunker Trust Estate
Hunt Oil Company
Hunt Petroleum Corporation
William Herbert Hunt Trust Estate
The Hunter Company, Inc.
Hunter, James A.
Hurley Oil and Gas Company

### APPENDIX B—DOCKET NO. AR67-1, ET AL.—Continued

### RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67-1, ET AL.—Continued

Hutton, H. L.
Ben C. Hyde, Jr.
Hynson, R. C.
Imperial Production Corporation
Inabnet, W. B.
Inger, Henry S.
Ingersoll Power & Fabricating Company Inc.
International Helium Inc.
Investors Royalty Company, Inc.
Jabco Inc.
Jackson, F. R.
Jackson, J. E.
Jackson, J. E., Inc.
L. B. Jackson Company
T. L. James & Company, Inc.
Javelin Oil Company, Inc.
The Jaybird Corporation
Jenkins, Charles L.
Jenkins-Ray Supply
Jennings, R. L. and Clogg, M., d/b/a Jennings and Clogg
Jernigan, J. E. and Morgan, M. V., d/b/a Jernigan & Morgan Oil Company
Jernigan and Morgan Transmission Company
Johnson, E. Lyle
Johnson, Gilbert S.
Johnson, Howard C.
Johnson, Rubein V.
Jones, Carroll G.
Jones, James Marshall
Jones, Joseph M.
L. E. Jones Drilling Company
Jones, O'Brien Inc.
Jones, Shelburne and Pellow Oil
Jorden, Jack C., Jr.
Josaline Production Company
Jowoco, Inc.
Karll, R. P.
K. B. Compression Company, Inc.
Keener Oil Company
Kemp, James E.
Kenyon, Clarence
Kerr-McGee Corporation
Ketchum, Ralph F., d/b/a Ketchum Oil Company
Key, Edmund M.
Killingsworth, S. H.
King, Liberto Investments
King, Robert E.
Kinnebrew, Lee
Kinsey, Norman V.
Kirby Petroleum Company
Kirkpatrick Oil and Gas Company
Kubler, E. C., Jr.
R. Lacy, Inc.
Ladner, Heber
Laffoon Oil Company
La Gloria Oil and Gas Company
P. G. Lake, Inc.
William H. Lambdin
The Lancer Corporation
Landa Oil Company
Langford Drilling Company
Lankford, K. D., Jr.
Larco Drilling Company
Lario Oil and Gas Company
Larson, Perry E. and Max L. Thomas
Larue, Fred, d/b/a Larue-Smith Prod. Co.
Latham, Joe
Latimer, D. C.
Lechner and Hubbard
LeCuno Oil Corp.
Lee Drilling Company
Lee, R. A. and Ladner, H. L.
Lee, Robert A.
Le Gendre, P. G.
Lemon, I. M., Mrs.
Lerner, W. Zolley, d/b/a Ko-Ler Oil Company
Lewis, Ethel May Neel
Lillystrand, T. O., Jr.
The Lincoln Converse Company
Little, Quintin
Livingston Oil Company
Lomac Drilling Company
London, D. E.
London Gas Company
Lone Star Producing Company
Longhorn Production Company
Lubell Oil Company
Lynn Drilling Company
Lyons, C. H., Jr.
Lyons and Logan
Lyons, C. H., Sr.

## APPENDIX B—DOCKET NO. AR67-1, ET AL.—Continued

## RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67-1, ET AL.—Continued

McAlester Fuel Company
W. C. McBride, Inc.
McCain, M. F.
McCalman Drilling Company, Inc.
McCamic, Charles
McCasland, T. H.
McCausland, Oscar B.
McCommons Oil Company
McCommons, William E., d/b/a McCommons Exploration Company
McConnell, D. B.
McCord, Charles T., Jr., d/b/a McCord Oil Company
McCulloch Oil Corporation of California
McGoldrick and Watson Drilling Company
McGuire, T. W.
McKnight, Peyton, Jr.
McLemore, B. Regan
McMahon, C. L., Jr.
McMillin, Frank E.
McMurrey, Jim, Estate
McNeish, George R.
McRae, Ethel C.
McWood Corporation
M & M Producing Company
Machin Oil Ltd.
Mack Oil Company
Mackey, Earl T.
Madole, J. D.
Magna Oil Corporation
Maguire, Russell
Malernee Oil Company
Manziel, Bobby
Manziel, Dorothy N.
Mapco Production Company
Marathon Oil Company
Marcus, Earl
Marks, E. W., Sr.
Marr, M. H.
Marshall Exploration Company Inc.
C. F. Martin Inc.
W. T. Massey and Harry A. Moore, d/b/a Massey & Moore
Mathews, Howard
Mayfield Corporation
Maynard Oil Company
Mayronne, R. W., Jr., d/b/a Riverside Oil Company
Maytex Company
Medallion Oil Company
Menefee, J. M.
Mercury Drilling Company
Merrick, Ward S., Jr.
Mid-America Minerals Inc.
Mid Century Oil and Gas Company
Midhurst Oil Corporation
Midway Oil Company
Midwest Oil Corporation
Miles Kimball Company
Miller, Paul L.
Miss-Tex Oil Producers
Mitchell, George and Associates, Inc.
Mitchell, W. H.
Mobil Oil Corporation
Mobley and Stephens
Moffatt, Robert J.
Moffitt, Mrs. Tom J.
Moise, Mrs. Leah H.
W. A. Moncrief
Monla Gas Company Inc.
Monroe Gas System Inc.
Monsanto Company
Morgan Brothers
Morgan, Dave
Morgan, Fred
Morgan, J. A.
Morgan, Margaret M., Mrs.
Morris, C. L.
Morris, P. D.
Mortimer, Mrs. Betty D.
Mosbacher, Robert
Moss, H. S.
Murphy, Charles H., Jr.
Murphy Oil Company of Oklahoma Inc.
Murphy Oil Corporation
Muslow, James
Mutual Investment Company
Myers, Sidney G., Jr.
Nafco Oil and Gas Company Inc.
National Bank of Commerce of Houston
National Fuels Corporation
National Oil Company Inc.

APPENDIX B—DOCKET NO. AR67-1, ET AL.—Continued

### RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67-1, ET AL.—Continued

**Natol Petroleum Corporation**
**Natural Gas and Oil Corporation**
**Neal, T. J.**
**Nemours Corporation**
**Neustadt, Doris W.**
**Newton Naval Stores Company, Inc.**
**Nichols, Irl A.**
**Nolan, William C. and T. M.**
**North Central Oil Corporation**
**North Louisiana Gas Company Inc.**
**Norton, Annie**
**Norton Oil Company Inc.**
**Norville Oil Company Inc.**
**Nowery, James R.**
**O'Boyle, John W.**
**O'Boyle, Kathleen, Trust No. 2**
**O'Rourke, D. F.**
**OK and B Drilling Company**
**Oklahoma Natural Gas Company**
**Oliver, Rees R.**
**Oliphant, A. G.**
**Olympic Oil Company**
**Omega Petroleum Corporation**
**Onstott, L. J., d/b/a Progress Petroleum Products**
**Orr, B. B.**
**Osborn, Jewel**
**Osborn, W. B., Jr.**
**W. B. Osborn, Jr., Executor The Estate of W. B. Osborn, Sr.**
**Owen, K. D.**
**Oxley, John C.**
**Ozark Gas Corporation**
**P. S. and G., Inc.**
**Page, Wiley**
**Palmer, Milo T.**
**Pan American Petroleum Corporation**
**Panola Trading Company, Inc.**
**Parker, G. C.**
**Patterson, H. I. and Williams, R. E.**
**Peake Petroleum Company**
**Penn, G. E.**
**Perkins, Elizabeth**
**Perkins, J. R.**
**Perkins, J. R., d/b/a Perkins Production Company**
**Perritt, H. W.**
**Petroleum Exploration, Inc., of Texas**
**Petroleum Corporation of Texas**
**Petroleum Management, Inc.**
**Pewitt, Paul H.**
**Phillips, B. F., Estate of**
**Phillips, Jack L.**
**Phillips, Leonard W.**
**Phillips, Loyce**
**Phillips, O. A., Estate of**
**Phillips Petroleum Company**
**Pickens, W. L.**
**Pioneer Oil and Gas Company, Inc.**
**Pioneer Oil Investment Company**
**Placid Oil Company**
**Porter, L. B.**
**Potter, Tom**
**Powers, M. F. Estate**
**Prentice, Paul R.**
**Prentiss, W. P.**
**Price, Jack E.**
**Proctor, Douglas E., Jr.**
**Pruet, Chesley**
**Quisenberry, W. Y.**
**R. A. F. Natural Gas Corporation**
**Radford, C. H.**
**Raigorodsky, Paul M.**
**Ray, Lucie L.**
**Raymond Oil Company, Inc.**
**Read, Paul L.**
**Howard M. Redwine**
**Reed, M. T.**
**Republic Royalty Company**
**Reserve Oil and Gas Company**
**Reynolds Mining Corporation**
**Rhoades Oil Company**
**Richardson Oils, Inc.**
**Richenthal, Arthur**
**C. R. Ridgway and W. B. Ridgway**
**Ridgway Management, Inc.**
**Rimrock Tidelands, Inc.**
**Rio Rojo Gathering System, Inc.**
**Robbins, J. C., Jr.**
**Robbins Petroleum Corporation**
**Roberts, J. I.**
**Roberts, J. I. and Murphy, C. H., Jr. d/b/a Roberts and Murphy**
**Robinson, L. L.**
**Robinson & Marshall Drilling Company**
**Rogers, Hellena Fox Wright**

APPENDIX B—DOCKET NO. AR67-1, ET AL.—Continued

RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67-1, ET AL.—Continued

Roosth and Genecov Production Company
Roper, Frank C.
Rorem, S. D.
Rosario Production Company
Henry R. Rose
Ross Production Company
Ross, R. M.
Wilhelmina duP. Ross
Rougon, Dr. and Mrs. A. L.
Rowan, J. Mike
R. D. Roy and Company, Inc.
Rozeman, A. M.
Rudco Oil and Gas Company
Rudman, Rose
Ruffin, J. F., Jr., Trustee
Rushing, J. S.
Russ, John
Ryan, Fred H.
Ryan, P. H.
Ryan, Ray
Sabianna Oil Company, Inc.
Samedan Oil Corporation
Martin A. Samuelson
Sanders, Nell E.
Sanford, John T.
Schafer Drilling Company
Schober, Henry I.
Schwartz, C. B.
Scott, Francis W.
Joseph E. Seagram & Sons Inc., d/b/a Texas Pacific Oil Company
Sells Petroleum Inc.
Sellwood and Myers
Service Gas Products Company
Sesco Production Company
Shadid, Fred V.
Shalett, H. T. and Crow, David
Shear, Warren
Shell Oil Company
Shields, Jay M.
Sho Van Gas Producing Company
R. H. Siegfried Inc.
Siesta Oil and Exploration Company, Inc.
Signal Oil & Gas Company
Simmons, D. J., d/b/a Farrell and Company of Louisiana
Simmons, Jay
Simmons, Maxwell D.
Sinclair Oil & Gas Company
Singer, Joseph B.
Skeeters, A. Z.
Skelly Oil Company
Skelton, D. W.
Sklar, Sam
Slack, Bob B.
Smith, Douglas V.
Smith, E. D.
Smith, H. S.
Smith, J. J.
Smith, L. E.
Smith Operating & Management Company
Smith, P. E.
Smith, R. E.
Smith, Walter R.
Snee, William E.
Sohio Petroleum Company
Sohoma Natural Gas Company, Inc.
South Central Natural Gas Corporation
Southern Union Production Company
Southwest Gas Producing Company
Southwestern Exploration Consultants, Inc.
Stack, J. E., Jr.
R. A. Stacy, Jr.
Standard Oil Company of Texas, a Division of Chevron Oil Company
States Oil Company, Inc.
Stephens Production Company
Stephenson, J. E.
Stewart, Austin E.
D. W. Stewart, Jr., and E. L. Stewart
Strahan, Joe G.
Strength, (Mrs.) Janie R.
Harry J. Strief, Estate of
Stringer, Murray D.
Sun Oil Company
Sunnyland Contracting Company, Inc.
Sunray DX Oil Company
Sunset International Petroleum Corporation
The Superior Oil Company
Sutton, Carole Daube
Tacony Company, The
Talbot, C. P.

APPENDIX B—DOCKET NO. AR67-1, ET AL.—Continued

RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET No. AR67-1, ET AL.—Continued

Tanner, J. W.
Tate, Ernest W.
Taubert, J. E.
Taylor, Mrs. Douglas Havard
Taylor, McCleland
Teekel, Lloyd G.
Tenneco Corporation
Tenneco Oil Company
Texaco Inc.
Texas Gas Exploration Corporation
Texas San Juan Oil Corporation
Thomas, Evan A.
Thomason, D.
D. Thomason Production Company, Inc.
Thompson, J. Cleo
Tidewater Oil Company
Tittle, W. M.
Todd, Dr. John D.
Toto Gas Company
Trahan, J. C.
J. C. Trahan, Drilling Contractor, Inc.
Trans-State Oil Company, Division of Hess Oil and Chemical Corp.
Trant, Mike, d/b/a Mike Trant Drilling Company
Trant, Sam
Treat, Frank B.
Tri J. Inc.
Trice Production Company
Tuttle, R. M., d/b/a R. M. Tuttle Pipe Line,
Twin Gas Company
Union Oil Company of California
Union Producing Company
Union Texas Petroleum, a Division of Allied Chemical Corporation
Vanson Production Corporation
Vaughn, G. H., Jr. and Jack C.
Vaughn, G. H., Jr.
Vaughn Petroleum Inc., Agent
Vaughey and Vaughey
Venters, Harley E.
The Vickers Petroleum Co., Inc.
Wager, Dan R.
Walker, Keith F.
Walker, Ross
Walsh, Frank H.
Wandel, Philip
Wannop, Mary Fitts
Warren American Oil Company
Warren Petroleum Corporation
Wegmann, W. A.
Westates Petroleum Company
Westheimer Neustadt Corporation
Westland Oil Development Corporation
Whelan, D. E. and R. J.
Wheless Drilling Company
Wheless, Joseph Sidney, Jr.
N. H. Wheless Oil Company
Wheless, W. M.
Whitaker, Douglas
Whitaker, John C.
White, Blanche N.
White, Janet
White, T. J., Jr.
Whitehall Oil Company, Inc.
Whittington Number Four
Wichita River Oil Corporation
Wico Oil Company
Wiedehold, William C., Agent
Williams, Charles K.
Williams, E. B., Jr.
Williams, E. B., Sr.
Williams, George H. and Hill
Williams Pressure Service Company
Williams, Robert Gordon
Wilson, Bruce L.
Wilson, Norton F.
Winwell Inc.
Wise Operating, Inc., of Tyler
Wood Oil Company
Woods, Harold L.
Woods Petroleum Corporation
Woolf, Geraldine H.
Worldwide Petroleum Corporation
Worth Drilling Company
Wrather, J. D., Jr.
Hattie C. Wright, Administratrix to J. F. Wright
Wunderlich Development Company
W. R. Yinger
Yoakam, Coler, Jr.
Young, Marshall R.
Marshall R. Young Oil Company
Zephyr Drilling Corporation
Zephyr Oil Company

### APPENDIX C—DOCKET NO. AR67–1, ET AL.

### PIPELINE PURCHASERS MADE RESPONDENTS TO THE AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET NO. AR67–1, ET AL.

**Arkansas Louisiana Gas Company**
**Cimarron Transmission Company**
**Cities Service Gas Company**
**Cushing Gas Transmission Company**
**El Paso Natural Gas Company**
**Fort Smith Gas Corporation (now Arkansas Oklahoma Gas Corporation)**
**Humble Gas Transmission Company**
**Lone Star Gas Company**
**Louisiana Nevada Transit Company**
**Michigan Wisconsin Pipe Line Company**
**Mississippi River Transmission Corporation**
**Natural Gas Pipeline Company of America**
**Panhandle Eastern Pipe Line Company**
**Rio Sabine, Incorporated**
**Southern Natural Gas Company**
**Tennessee Gas Pipeline Company, A Division of Tenneco Inc.**
**Tensas Gas Gathering Corporation**
**Texas Eastern Transmission Corporation**
**Texas Gas Transmission Corporation**
**Trunkline Gas Company**
**Union Gas System, Incorporated**
**United Fuel Gas Company**
**United Gas Pipe Line Company**
**Valley Gas Transmission, Incorporated**

### APPENDIX D—DOCKET NO. AR67–1, ET AL.

### SECTION 4 RATE SUSPENSION PROCEEDINGS[1] CONSOLIDATED FOR HEARING WITH AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET NO. AR67–1

**Name[2] and Docket Nos.**

**Amerada Petroleum Corp.; RI65–334**
**American Petrofina Company of Texas (Oper), *et al.*; RI64–442**
**Apache Corporation; RI63–332**
**Arkla Exploration Co.; RI64–233, RI64–240, RI64–277, RI66–339**
**Ashland Oil & Refining Co., *et al.*; RI60–288**
**Bander, Joe, *et al.*; RI67–54**
**Biglane, D. A., *et al.*; G–20190**
**Bond, Durbin; G–20184**
**Borden, S. P.; G–20191**
**Bracken Oil Co. (Oper.), *et al.*; G–16084**
**Bridewell, Billy (Oper.), *et al.*; RI63–241**
**Cameron, A. A., d/b/a Cameron Oil Co., *et al.*; RI65–521, RI67–80**
**Carter-Jones Drilling Co., Inc. (Oper.), *et al.*; RI61–546**
**Champlin Petroleum Co.; RI63–304**

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**See footnotes at end of table, p. 417.**

## APPENDIX D—DOCKET NO. AR67–1, ET AL.—Continued

### SECTION 4 RATE SUSPENSION PROCEEDINGS[1] CONSOLIDATED FOR HEARING WITH AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET NO. AR67–1—Continued

### Name[2] and Docket Nos.—Continued

Claiborne Gasoline Co.; RI64–260
Cohen, Don (Oper.), *et al.;* RI64–421
Coles, Marvin J., *et al.;* RI64–134
Continental Oil Co.; G–19734, G–19919, G–20197, RI60–193, RI60–223, RI61–249, RI63–217, RI63–350, RI63–368, RI64–165, RI64–166, RI64–784, RI65–231, RI67–72
Continental Oil Co. (Oper.), *et al.;* RI63–240, RI65–128
Cook, Tom, Jr. (Oper.), *et al.;* G–16638, RI60–133
Cox, Edwin L.; RI63–219, RI63–428, RI64–68, RI64–573
Cyprus Mines Corp. & Skelly Oil Company (Operator); RI64–8
Coastal States Producing Company; RI67–159
Davis, C. D., *et al.*, and Car-Tex Producing Co., *et al.;* RI65–374
Draughn, Paul V., Sr.; RI65–422
Draugh, Paul V., Jr.; RI65–424
Ells, H. A., *et al.*, d/b/a All Star Gas Company; RI63–178
Falcon Seaboard Drilling Co., *et al.;* RI63–221
Fields, Bert, Estate, *et al.;* RI64–290
Forest Oil Corp.; RI63–230
Forest Oil Corp. (Oper.), *et al.;* RI65–125
Four States Drilling Co., Inc. (Oper.), *et al.;* G–20081
Gant, Walter H. (Oper.), *et al.;* RI64–254
General American Oil Co. of Texas; RI63–377, RI65–345
Greenville Gasoline Co., Inc. (Oper.); RI63–275
Gulf Oil Corp.; G–11335, G–13519, G–13581, G–16657, G–19742, G–20560, RI60–214, RI61–169, RI61–212, RI62–114, RI63–148, RI64–198, RI64–231, RI64–247, RI65–600
Gulf Oil Corp. & Ashland Oil & Refining Co.; RI65–599
Hall, Stanton A.; RI65–421
Hamman, Blake (Oper.), *et al.;* RI64–710
Harper Oil Co. (Oper.), *et al.;* RI63–450, RI65–274
Hefner Co., The (Oper.), *et al.;* RI63–472
Helmerich & Payne Inc. (Oper.), *et al.;* RI63–445
Home-Stake Production Co. (Oper.), *et al.;* RI64–124
Humble Oil & Ref. Co. (Oper.), *et al.;* RI66–24, RI66–149, RI66–279, RI67–108
Hunt, H. L.; G–13531, G–16642, G–19754
Hunt, H. L., *et al.;* RI61–203, RI62–136, RI64–44, RI66–131
Haroldson L. Hunt, Jr., Tr. Est.; RI66–239, RI67–180
Hassie Hunt Trust; G–19752, RI61–206, RI63–104, RI64–213, RI65–265, RI67–100
Hassie Hunt Trust (Oper.), *et al.;* RI66–130
Hunt, Lamar; G–14936, G–16615, RI61–195, RI62–137, RI63–151, RI64–212, RI65–263, RI66–134, RI67–101
Lamar Hunt Trust Estate; G–14938, G–16618, RI61–194, RI62–105, RI63–150, RI64–215, RI65–264, RI66–135, RI67–102
Lamar Hunt Trust Estate, *et al.;* RI66–240, RI67–181
Hunt, Nelson Bunker Trust Est.; G–14939, G–16616, RI61–196, RI62–139, RI63–149, RI64–211, RI65–262, RI66–136, RI66–241, RI67–103, RI67–182
Hunt Oil Co.; RI63–229, RI66–127, RI66–243, RI67–98, RI67–178, RI67–179

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See footnotes at end of table, p. 417.

APPENDIX D—DOCKET NO. AR67–1, ET AL.—Continued

SECTION 4 RATE SUSPENSION PROCEEDINGS[1] CONSOLIDATED FOR HEARING WITH AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET NO. AR67–1—Continued

Name[2] and Docket Nos.—Continued

**Hunt Oil Co. (Oper.), *et al.;* RI66–237, RI66–270**
**Hunt Oil Co., *et al.;* RI66–242**
**Hunt Petroleum Corp.; RI65–261**
**Hunt, William Herbert Trust Est.; G–14937, G–16617, RI61–197, RI62–140, RI64–216, RI65–253, RI66–125, RI66–238, RI67–104, RI67–183**
**Hunter Co. Inc., The; G–19920**
**Hurley Oil & Gas, *et al.;* G–16645**
**Hurley Oil & Gas (Oper.), *et al.;* & Mobil Oil Corporation; RI62–318, RI64–201**
**Hyde, Ben C. W., Jr. (Oper.); RI63–279**
**T. L. James & Co., Inc., *et al.;* RI66–172, RI66–173**
**Jernigan, J. E. & Morgan, M. V., d/b/a Jernigan & Morgan Oil Co.; RI63–233**
**Jernigan & Morgan Transmission Co.; RI63–234**
**R. Lacy, Inc., *et al.;* G–14315**
**Laffoon Oil Co.; RI64–689**
**Landa Oil Co.; G–19028, RI64–730, RI64–740, RI65–397**
**Lario Oil & Gas Co.; RI64–601**
**D. C. Latimer; RI61–410**
**LeCuno Oil Corp.; RI60–459**
**LeCuno Oil Corp., & Landa Oil Co.; RI61–210**
**London Gas Co., *et al.;* RI61–112, RI63–176, RI63–177**
**McCommons Oil Co., *et al.;* RI64–21, RI65–568**
**McCommons, W. E., d/b/a McCommons Exploration Co., *et al.;* RI63–281**
**Mack Oil Co.; RI64–18**
**Mapco Production Co. (Oper.), *et al.;* RI66–20**
**Marathon Oil Co., RI66–140, RI67–121, RI66–33, RI66–74**
**Marathon Oil Co. (Oper.), *et al.;* RI66–19,**
**Marks, E. W., Sr., *et al.;* RI62–272**
**Marr, M. H.; RI66–144**
**C. F. Martin, Inc.; RI65–372**
**Maynard Oil Co.; RI64–288, RI67–17, RI67–18**
**Maynard Oil Co. (Oper.), *et al.;* RI64–287, RI66–10**
**Midway Oil Co., *et al.;* RI64–87**
**Midwest Oil Corp.; RI64–195**
**Midwest Oil Corp. (Oper.), *et al.;* RI64–214**
**George Mitchell & Associates, Inc., Agent for Ann W. Alexander, Executrix, *et al.;* RI61–239**
**Mobil Oil Corp.; RI61–113, RI61–188, RI65–196**
**Mobil Oil Corp. (Oper.), *et al.;* RI61–114, RI64–210, RI65–276, RI66–98**
**Mortimer, Mrs. Betty D., *et al.;* G–20194**
**Murphy Oil Corp., *et al.;* RI61–145,**
**Murphy Oil Corporation; RI61–146**
**Newton Naval Stores Co., Inc.; RI65–346**
**North Central Oil Corp., *et al.;* G–19026**
**Norville Oil Co., Inc.; RI64–19**
**Page, Wiley (Oper.), *et al.;* RI64–203**

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See footnotes at end of table, p. 417.

### APPENDIX D—DOCKET NO. AR67-1, ET AL—Continued

### SECTION 4 RATE SUSPENSION PROCEEDINGS[1] CONSOLIDATED FOR HEARING WITH AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET NO. AR67-1—Continued

### Name[2] and Docket Nos.—Continued

Pan American Petroleum Corp.; G-13516, G-16629, G-17058, G-19641, G-19765, RI61-167, RI61-192, RI62-151, RI63-81, RI63-138, RI63-231, RI64-222, RI64-231, RI65-178, RI65-277, RI65-294, RI66-129
Pan Amer. Petr. Corp. (Oper.), *et al.;* RI65-112
Perkins, Elizabeth, *et al.;* RI64-114
Phillips Petroleum Co.; G-12283, G-16112, G-16113, RI60-257, RI63-394, RI64-619, RI65-127, RI65-577, RI66-324
Phillips Petroleum Co. (Oper.), *et al.;* RI61-284, RI67-173
Pioneer Oil & Gas Co., Inc., *et al.;* G-20195, RI61-51
Placid Oil Co. (Oper.), *et al.;* G-15370, G-15371, G-17423, G-19767, RI61-176, RI61-193, RI61-213, RI62-104, RI62-144, RI63-132, RI64-202, RI64-239, RI65-259, RI66-132, RI67-91
Ridgway, C. R. & W. B.; G-19932
Ridgway Management Inc.; G-20068
Rimrock Tidelands Inc., *et al.;* G-15073
Robbins, J. C., Jr.; RI63-475
Robbins Petroleum Corp. (Oper.), *et al.* and Pan American Petr. Corp.; RI63-476
Roper, Frank C.; RI60-389
Ross, R. M.; RI65-318
Rowan, J. Mike (Oper.), *et al.;* RI63-293
Ruffin, J. F., Jr., Trustee; G-20192
Samedan Oil Corp.; RI63-466, RI63-467
Joseph E. Seagram & Sons, Inc., d/b/a Tex. Pacific Oil Co.; RI63-183, RI63-443
Shell Oil Co.; RI64-791, RI65-474, RI65-477, RI65-483
Shell Oil Co. (Oper.); RI65-485
Shell Oil Co. (Oper.), *et al.;* RI66-14, RI65-476
Shell Oil Co., Cabot Corporation (SW) (Oper.), *et al.*, Herman George Kaiser, & Phillips Petroleum Company (Oper.), *et al.;* RI65-475
R. H. Siegfried Inc., *et al.;* RI62-380, RI64-677
Simmons, Maxwell D. (Oper.), *et al.*; RI63-477
Sinclair Oil & Gas Co.; RI61-530, RI62-152, RI63-131, RI64-257, RI65-14, RI65-38, RI66-77, RI66-86, RI66-345.
Sinclair Oil & Gas Co., *et al.;* RI60-231, RI61-172
Sinclair Oil & Gas Co. (Oper.), *et al.;* RI64-256, RI65-28, RI66-166
Skelly Oil Co.; RI60-253, RI67-10
Sohio Petroleum Co.; RI66-276, RI67-81
Southern Union Production Co.; RI65-587
Southwest Gas Producing Co., Inc.; RI66-351
Southwestern Explor. Consultants Inc. (Oper.), *et al.;* RI60-245, RI60-360
Standard Oil Co. of Tex., Div. of Chevron Oil Co.; RI63-462
Sun Oil Company; RI66-401
Sunray DX Oil Co.; RI64-335
Sunset International Petroleum Corp.; RI61-545
The Superior Oil Co.; G-20347, RI61-88
The Superior Oil Co. (Nevada) and James W. Harris; G-14106
The Superior Oil Co. and Gas Rock Corporation; G-18694
Ernest W. Tate; RI66-357
Tenneco Oil Co.; RI63-474, RI65-145

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See footnotes at end of table, p. 417.

APPENDIX D—DOCKET NO. AR67–1, ET AL.—Continued

SECTION 4 RATE SUSPENSION PROCEEDINGS[1] CONSOLIDATED FOR HEARING WITH AREA RATE PROCEEDING (OTHER SOUTHWEST AREA), DOCKET NO. AR67–1—Continued

Name[2] and Docket Nos.—Continued

Tenneco Oil Co. (Oper.), *et al.;* RI64–741, RI65–534, RI66–87, RI66–369

Tenneco Oil Co., Continental Oil Co.; RI62–539

Texaco Inc.; RI66–329, RI66–383, RI67–2

Tidewater Oil Co. (Oper.), *et al.;* RI64–726, RI65–129, RI67–78

Tidewater Oil Company & James W. Harris (Oper.), *et al.;* RI64–762

Todd, Dr. John D.; RI60–352

J. C. Trahan, Drilling Contr., Inc. & Marshall R. Young Oil Co.; RI61–499, RI64–722

J. C. Trahan, Drilling Contr., Inc. (Oper.), *et al.;* RI63–21, RI64–329, RI64–380, RI65–548

Twin Gas Co.; RI63–464

Twin Gas Co. (Oper.); RI63–465

Union Oil Co. of Calif. (Oper.), *et al.*; RI66–316, RI66–317, RI66–426

Union Texas Petroleum, Div. of Allied Chemical Corp. (Oper.), *et al.;* RI64–742, RI65–126

Union Texas Petroleum, Div. of Allied Chemical Corp., *et al.;* RI63–461

Vaughn, G. H., Jr., *et al.;* RI61–182

Venters, Harley E.; RI66–356

Walker, Ross; RI65–499

Whelan, D. E. and R. J.; RI62–39

Wichita River Oil Corp.; RI64–151

Wunderlich Development Co. (Oper.), *et al.;* RI65–124

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[1] These proceedings are consolidated only insofar as they pertain to sales in the areas enumerated in Appendix A.

[2] This producer designation is for general identification and may not include all of the respondents designated in the respective orders initiating rate suspension proceedings.

Ross, *Commissioner dissenting in part:*

In refusing to dispense with the Examiners' decisions in the *Hugoton-Anadarko* and *Texas Gulf Coast* proceedings, the Commission now finds itself in the position where it must proceed on an *ad hoc*, case-by-case basis, as I feared. The repetitive, time consuming and expensive procedures of the last seven years are to be repeated. With all the interested parties anxiously awaiting not only a final determination of the *Permian Basin* case, which should come sometime within a year, but also anticipating the Commission's decision itself in Southern Louisiana, it seems senseless to me to institute still another area rate proceeding.

I agree to securing information which is clearly needed, but I do not agree that we will gain anything in the interim by diverting the attention of all concerned from a determination of the method of establishing just and reasonable rates now underway in pending area cases.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP66–299

### FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 28, 1967)

On December 27, 1966, Colorado Interstate Gas Company (Colorado) filed a motion in Docket No. CP66–299, as supplemented on February 1, 1967, to amend the Commission's order issued July 18, 1966, 36 FPC 116, in said docket, by authorizing an increase in the maximum wellhead shut-in pressure and the maximum storage gas inventory in the Fort Morgan Storage Field in northeast Colorado, all as more fully set forth in the motion to amend, as supplemented, in this proceeding.

The order of July 18, 1966, among other things, authorized Colorado to develop the Fort Morgan Field as a storage reservoir and, further, paragraph (E)(4) of said order provided that the maximum inventory of gas stored shall not exceed 12,929 MMcf at 14.73 psia and the maximum wellhead shut-in pressure shall not exceed 1,370 psia. Colorado now requests that the maximum inventory of gas stored be increased to 17,106 MMcf at 14.73 psia and that the maximum wellhead shut-in pressure be increased to 1,813 psia.

Colorado states that the increase in reservoir pressure will assist in the development of the southern reservoir in the Fort Morgan Field and that the increase reservoir volume and pressure would permit greater annual withdrawals from the field.

Due notice of the filing of the motion to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 18, 1967 (32 F.R. 586). No protest or petition to intervene has been filed in this proceeding.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 18, 1966, in Docket No. CP66-299 be amended as hereinafter ordered.

*The Commission orders:*

(A) Paragraph (E)(4) of the Commission's order issued July 18, 1966, in Docket No. CP66-299 is amended to read as follows:

> The maximum inventory of gas stored in the Fort Morgan Field shall not exceed 17,106 MMcf at 14.73 psia and the maximum wellhead shut-in pressure shall not exceed 1,813 psia without prior authorization of the Commission; and * * *

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP67-60

### ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 28, 1967)

On January 3, 1967, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP67-60 a petition to amend the "budget-type" order issued in said docket on December 6, 1966, 36 FPC 979, which order authorized the construction and operation of gas purchase facilities during the calendar year 1967. By the instant filing, Petitioner requests authorization to construct and operate, subject to the limitations and conditions specified in the subject order, certain compression facilities and appurtenances, in addition to the presently authorized gas purchase facilities, in order to compensate for declining reservoir pressures of existing gas sources, all as more fully set forth in the petition to amend.

The subject order authorized Petitioner to construct, during the calendar year 1967, and to operate budget-type gas purchase facilities in conformity with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act. The aggregate cost for all facilities authorized is not to exceed $2,000,000, and the total cost of any single project is not to exceed $500,000.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in the instant docket on December 6, 1966, be amended as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on December 6, 1966, in Docket No. CP67-60 is amended so as to authorize, subject to the limitations and conditions specified in said order, the construction and operation of compression facilities and appurtenances necessary to compensate for declining reservoir pressures of existing gas sources, as hereinbefore set forth and as more fully set forth in the petition to amend filed in this proceeding.

(B) In all other respects the certificates issued in the subject docket shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP67-184

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued February 28, 1967)

On December 27, 1966, Mississippi River Transmission Corporation (Applicant), filed in Docket No. CP67-184 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation and delivery of natural gas to St. Louis Malleable Casting Company (Casting), a direct sale customer, and transmission facilities which were used to serve Casting, all as more fully set forth in the application.

Applicant states that Casting has discontinued the operation of its plant in St. Louis, Missouri, which has been served by Applicant, and that the related gas delivery contracts have been terminated at Casting's request.

The specific facilities Applicant proposes to abandon were used only to serve Casting, and include the measuring and regulating station at the delivery point, a total of approximately 335 feet of 2-inch and 4-inch pipeline, and appurtenant equipment.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record.

*The Commission finds:*

(1) Applicant, Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60–95 (24 FPC 1020, 1038).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

*The Commission orders:*

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PENNSYLVANIA GAS COMPANY, DOCKET NO. G–2136

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 28, 1967)

On September 30, 1966, the Pennsylvania Gas Company (Petitioner) filed in Docket No. G–2136 a petition to amend the order issued in said docket on July 6, 1953, 12 FPC 1056, so as to authorize Petitioner to discontinue certain reports respecting the operations of Petitioner's East Branch (B) Storage Area, all as more fully set forth in said petition to amend.

On December 12, 1966, Petitioner filed a supplement to the petition to amend filed with the Commission on September 30, 1966, and requested that the order issued in the aforementioned docket on July 6, 1953, be amended so as to authorize the continued operation of certain natural gas facilities, all as more fully set forth in the petition to amend.

By the order issued in the instant proceeding on July 6, 1953, Petitioner was granted a certificate of public convenience and necessity authorizing the construction and operation of underground storage facilities, located in Sheffield Township, Warren County, and Hamilton Township, McKean County, Pennsylvania, including 3.2 miles of 12-inch pipeline from the storage area, known as East Branch (B), to its existing system in Roystow, Pennsylvania. Petitioner was ordered in Paragraph (C)(2) (v) to file certain reports every six months showing that input and withdrawal operations for each six month period have been within the limits set by the order.

Petitioner now states that the reports show that there has been compliance with the Commission's order as to the input and withdrawal operations and that there has been no loss of storage gas by reason of such operations and the other authorized storage operations and property ownership of Petitioner in any affected areas, and that the operating storage practices have proven the East Branch (B) storage facilities to be safe and economic. It asserts that no useful purpose would be served by continuation of such reports.

Petitioner states that it has spent a total of $114,796, on the facilities which it here seeks to be certificated in addition to the $423,545, for those facilities originally authorized. The added facilities were installed for more efficient operation of the storage facility under Petitioner's impression that further Commission authorization was not required.

Due notice of the subject petition to amend and supplement thereto and opportunity for hearing has been given by publication in the Federal Register on November 18, 1966 (31 F.R. 14700), and December 30, 1966 (31 F.R. 16736), respectively. No protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in said docket on July 6, 1953, be amended as requested by Petitioner in the petition and supplement filed herein, so as to authorize Petitioner to discontinue certain reports and to continue to operate certain facilities as hereinafter ordered.

*The Commission orders:*

(A) The order of the Commission issued July 6, 1953, in Docket No. G-2136 is amended so as to (1) delete therefrom the reporting requirements set forth in Ordering Paragraph (C)(2) (v) and insert in lieu thereof the following: "The maximum injection pressure of 530 pounds per square inch gauge shall not be exceeded without further authorization of the Commission"; and (2) authorize Petitioner to operate the East Branch (B) storage facilities actually installed subsequent to Petitioner's cost report dated March 25, 1955, all as more fully set forth in the petition to amend filed herein on September 30, 1966, and the supplement thereto filed December 12, 1966.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP67-81

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued February 28, 1967)

On September 26, 1966, Transwestern Pipeline Company (Applicant), filed in Docket No. CP67-81 an application and supplement thereto on December 6, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities in Texas and New Mexico for the transportation in interstate commerce of natural gas, all as more fully set forth in the application and supplement thereto.

Specifically, Applicant seeks authorization to construct and operate 8 miles of 36-inch loop line adjacent to Compressor Station WT-2 in West Texas and 8 miles of 30-inch loop line adjacent to Compressor Station WT-1 in Southeastern New Mexico along the West Texas lateral. The facilities will provide approximately 25,000 Mcf per day of additional capacity for delivery of natural gas to Applicant's mainline in Roswell, New Mexico. No additional sales are proposed by Applicant.

The estimated total cost of construction of these facilities of $2,609,000, will initially be financed out of funds made available from company operations and may be refinanced at a later date.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation, having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 10, 1963, in Docket No. CP63-290 (30 FPC 997).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities and the transportation of natural gas by Applicant as hereinbefore described and as more fully described in the application, supplement and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be completed and placed in actual operation within one year from the date of this order as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED NATURAL GAS COMPANY, DOCKET NO. CP67-157

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued February 28, 1967)

On December 5, 1966, United Natural Gas Company (Applicant) filed in Docket No. CP67-157 an application, as supplemented on December 16, 1966, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon in place its Medix Run Compressor Station, Benezette Township, Elk County, Pennsylvania, all as more fully set forth in the application.

By order issued in Docket No. CP64-67 on September 6, 1966, 36 FPC 586, Applicant and The Manufacturers Light and Heat Company were authorized to establish a new delivery point for an existing gas exchange arrangement thereby eliminating the need for the Medix Run Station. Accordingly, said order was conditioned upon Applicant's filing for permission and approval to abandon the Medix Run facilities and the instant application has been filed pursuant to said condition.

Applicant's Medix Run Compressor Station consists of one 330 horsepower compressor unit and one 300 horsepower compressor unit together with appurtenant facilities.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1943, in Docket No. G-328 (3 FPC 595).

(2) The facilities to be abandoned, as hereinbefore described, and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of said abandonment within 10 days thereof.

## OPINION NO. 516

## FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65-393

### OPINION AND ORDER GRANTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 1, 1967)*

*Syllabus*

1. **While there is no issue as to engineering or economic feasibility, because of possible changes in money market, Florida Gas is required to submit financing plan for approval prior to commencement of construction. P. 426.**
2. **From public's standpoint, proposed new supplies of gas will effect substantial cost savings to Florida Gas and its customers. P. 426.**
3. **Section 1(b) of the Natural Gas Act brings federal regulation to two distinct activities—transportation of natural gas in interstate commerce and sale in interstate commerce of natural gas for resale. P. 433.**
4. **Observing that no prior case has gone so far as to find a Congressional intent to bring direct industrial sales by producers *ipso facto* within ambit of statutory term, Commission points out that if decision here were to downgrade its responsibility to regulate interstate transportation of natural gas as compared with responsibility to regulate sales for resale, it would be writing a priority into the statute not evident on its face. P. 433.**
5. **Under Section 7(e) Commission's authority to lay down limitations is as broad as the public interest. P. 434.**
6. **Prior cases would not justify a ruling that regulatory tool of conditioning a transportation certificate up to and including control of field price, would not be possible as well under the first clause of Section 1(b) covering transportation, as under second clause, covering sales for resale. P. 434.**
7. **Commission's jurisdictional reach does not extend to the liquid products. P. 437.**
8. **Commission finds *Lo-Vaca* and *Amerada* not in point since both involved attempts on part of a jurisdictional pipeline to differentiate gas on a jurisdictional-nonjurisdictional basis by contract, either as to nature of use (*Lo-Vaca*) or place of use (*Amerada*). P. 438.**
9. **Commission sees no rational way to hold that commingling is irrelevant in *Texaco–Transco* and, at same time find it fully controlling here—to make such a distinction would be to concede that form, not substance, controls. P. 438.**
10. **Unclosed "gap" argument rejected; Commission *noting* that when it or courts have been constrained to close a "gap," closure has been to achieve a more worthy objective than regulatory symmetry. P. 438.**
11. **Neither on a price basis nor on matter of desirability of maintaining integrity of jurisdictional market can it be said that instant case is an attractive vehicle to extend jurisdictional perimeters. P. 441.**
12. **Commission has jurisdiction to condition a transportation certificate to require pipeline to assure that producer-utility contract price be adjusted—question is not whether Commission can condition but whether public interest requires it. P. 441.**

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*Initial decision appears on p. 466. Rehearing granted by order issued May 1, 1967, 37 FPC 829.

**13. To condition 7(c) certificate to future conformance with just and reasonable rate, would be to deny utility and its consumers the certainty of supply and field price which has been negotiated. P. 442.**

**14. Commission conditions transportation certificate upon producers filing appropriate assurances of willingness to adjust takes so that not more than 85% of the gas comes from off-shore sources, not subject to tax. P. 443.**

**15. There is nothing in the Gas Act or the cases that limits Commission in treating pipeline rate issue here. P. 444.**

**16. It is not appropriate here to make a determination of Florida Gas' costs, to allocate costs to company's rate schedules and to determine its rates. P. 444.**

**17. Florida Gas' entire rate proposal in this certificate proceeding and the various questions of rate design can be determined in a separate proceeding. P. 444.**

**18. In view of considerations here, certificate is conditioned to provide that rates to be effective when new facilities go into operation shall be those proposed by company; rate proceedings will be instituted by further order to determine just and reasonable rate levels. P. 445.**

**19. Noting that it would not be justified in requiring that gas be burned in any particular plant, Commission states that important considerations are presented on air pollution question and utility should cooperate with appropriate health authorities on place of its use. P. 446.**

**20. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificate of public convenience and necessity.**

**Commissioner Ross *dissenting*, joined by Chairman White, except as noted.**

***Leon M. Payne, Selby W. Sullivan, Robert Y. Patterson* and *Norman E. Duke* for Florida Gas Transmission Company.**

***J. P. Hammond, Harold H. Young, Jr., William P. Hardeman* and *Carroll L. Gilliam* for Pan American Petroleum Corporation.**

***James L. Graham, Jr.* for Florida Public Service Commission.**

***Louis O. Frost, Jr.* and *Bjarne B. Andersen, Jr.* for Florida State Board of Health.**

***Harry A. Poth, Jr., Peyton G. Bowman, III* and *Richard M. Merriman* for Florida Power & Light Company.**

***J. Evans Attwell* for Austral Oil Company Incorporated.**

***Phillip Endom, Robert E. May* and *Stanley M. Morley* for Sun Oil Company.**

***S. A. Brandimore* for Florida Power Corporation.**

***Alanson W. Willcox* and *Sidney Edelman* for Department of Health, Education, and Welfare of the United States.**

***William I. Harkaway* and *Herbert H. Brown* for the Staff of the Federal Power Commission.**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

CARVER, *Commissioner:*

Florida Gas Transmission Company (Florida Gas), a natural-gas company under the Natural Gas Act, seeks a certificate of public convenience and necessity pursuant to Section 7 of the Act, authorizing the construction and operation of additional facilities to increase its system capacity, particularly for additional volumes of natural gas to be transported from Louisiana to generating plants in Florida as a transportation service for Florida Power & Light Company (FPL). The gas would be supplied to FPL by Pan American Petroleum Company (Pan Am) and Austral Oil Company (Austral), both of whom are intervenors in this proceeding. Florida Gas filed its application on June 9, 1965. Various supplements were filed, and on January 17, 1966, 35 FPC 81, the Commission entered an order setting the case for hearing.

After the Commission's order of January 17, a last revised supplement was filed by Florida Gas on February 1, 1966; hearing commenced on February 28, 1966, and concluded on April 22, 1966. Besides the pipeline company, Florida Gas, the utility, Florida Power & Light, the two producers, Pan Am and Austral, intervenors, Florida State Board of Health, U.S. Department of Health, Education, and Welfare (HEW), Sun Oil Company (Sun), and the Staff, filed briefs before the Examiner and actively participated. Others, including another utility, Florida Power Corporation, the Florida Public Service Commission, and a distributor customer, Gainesville Gas Company, were allowed intervention but did not file briefs to the Examiner. The Florida Public Service Commission filed a brief with us, supporting the Florida Gas position. The decision of Presiding Examiner Alvin A. Kurtz was issued July 7, 1966, *infra*, p. 466.

There is no issue in the record before us as to the engineering or economic feasibility of Florida Gas' proposed expansion, the company's ability to finance the project, or as to the adequacy of supplies or the availability of a market. However, because of possible changes in the money market since the record closed we shall require Florida Gas to submit a plan of financing, subject to our approval before commencement of construction.

From the standpoint of the public the new supplies of gas, all apart from the question of air pollution discussed below, will effect substantial cost savings to Florida Gas and its customers as indicated by the record. Florida Gas proposes reductions below its presently effective rate schedules, subject to the proceedings now pending in Docket No. RP66-4.

One of the subsidiary issues in the proceeding now before us is whether we should adjust the rates proposed by Florida Gas for the transportation service for which it seeks initial authorization, the T-3 rate, and the related rate schedules now in effect. As will be discussed hereafter, we do not think it appropriate to determine rates for Florida Gas in this proceeding, beyond providing that its initial rate shall be determined in further proceedings upon further order of the Commission.

Another issue is the weight to be given in these proceedings to the evidence on air pollution in Florida. This, too, will be discussed later in the opinion.

The principal and overriding issue in this case is whether the sales by the producers, Pan Am and Austral, are jurisdictional. We hold that they are not.

The action of this Commission in originally certificating the construction of the pipeline facilities proposed to be expanded in these proceedings is relevant. In 1956, Houston Texas Gas & Oil Corporation and Coastal Transmission Corporation (who since then have merged to become Florida Gas Transmission Company, applicant herein) applied for a certificate to bring natural gas from Texas and Louisiana to peninsular Florida, not theretofore served with natural gas. The proposal was complex; more than 50 parties were permitted to intervene; and the decision of the Commission (the examiner's initial decision was omitted) initially and on petitions for rehearing (denied, but with an opinion) were affirmed in the Court of Appeals for the District of Columbia.[1]

In respects material here, the feasibility of the original project was supported by plans for a pipeline volume with three components: gas purchased by the pipeline to be sold to distributors for resale (principally to serve Florida communities); gas purchased by the pipeline for sale to direct industrial customers; and "transportation" gas, that is gas delivered to two large Florida power companies for use as boiler fuel in generating electricity.

As initially proposed, it was forecast that in the third operating year the composition of the pipeline's market would be 20.8 percent firm resale; 10.5 percent resale preferred interruptible; 6.4 percent direct preferred interruptible; 3.4 percent direct primary interruptible; and 58.9 percent transportation service. Further aspects of the 1956 proceedings will be discussed below, but we can note here that in 1965, the composition of the pipeline's business was 22.7 percent to gas distributors for resale; 32.6 percent for direct main line sales; and the remaining transportation service was 44.7 percent. Thus, it is clear that as originally contemplated and as it has actually developed in practice, Florida Gas is in large part a "transportation" pipeline.

The majority of the 1956 Commission pointed out that "this gas transportation arrangement is a distinguishing feature of applicants' proposals,"[2] and in its discussion of gas supply outlined the features of the there supporting contracts:

> As to the reserves for transportation gas for Florida Power and Florida Power & Light, these two parties have entered into 20-year contracts for gas to meet their requirements. Florida

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[1] Houston Texas Gas & Oil Corporation and Coastal Transmission Corporation, 16 FPC 118 (1956); on rehearing, 17 FPC 303; affirmed *sub nom. Florida Economic Advisory Council* v. *F.P.C.* (CADC–1957), 251 F. 2d 643; cert. den., 356 U.S. 959 (1958).

[2] 16 FPC 118, 121.

> Power has contracted with Sun Oil Co. and Pure Oil Co. for gas from the latters' reserves in two fields in southern Louisiana. Florida Power & Light has contracted with Sun for gas from Sun's reserves in 14 fields in south Texas, which reserves include those of two other companies in one of those fields. The gas would be delivered to Coastal at central points in the fields * * *. In addition, under the contracts, Sun and the other sellers are required to furnish the full contract demand for the entire 20-year period, which furnishes additional assurance of the adequacy of the transportation reserves.
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> * * * For the transportation gas, Florida Power & Light and Florida Power will pay the producers 18.5 cents per M.c.f. for gas delivered in Texas. The price for gas delivered in Louisiana will be 21.0 cents per M.c.f. for the first 2 years after the date of initial delivery and 22.5 cents per M.c.f. after the first 2 years.[3]

At the initial consideration of the Florida pipeline proposal, no question seems to have been raised as to the "jurisdictional" status of the utilities' contracts with producers. In its order denying rehearing, however, the Commission said this:

> As to such claimed jurisdictional questions as whether the producers selling to the power companies engage in jurisdictional services which must be certificated, the record is insufficient to permit such determinations which may, in any event, be more appropriately made in another proceeding where the facts are more fully developed.[4]

The Court of Appeals for the District of Columbia, apparently referring to this same point, said:

> Petitioner claims that one of the power companies and its suppliers fall under Commission jurisdiction, and must be certificated. The assertion is that the matter must be decided now, and not later, because it is possible that certification of the power company or its suppliers would lead to cancellation of the power company's promise to use 20% of the capacity of the pipeline and without this promise, the basis of the grant of the certificate would fall. It is true that the original contract between the power company and Houston contained a cancellation clause which lends color to petitioner's assertion that the danger of cancellation would be great if the Commission did exert jurisdiction. But this cancellation clause no longer exists; it has been deleted in accordance with the Commission's conditions. The Commission therefore thought the present facts did not warrant

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[3] 16 FPC 118, 124–125.

[4] 17 FPC 303, 310.

deciding whether it had jurisdiction over the power company or its suppliers, and we are not inclined to disagree.[5]

In its consideration of a separate question, namely the possibility that the proposal was infected by a violation of the unfair trade practices and anti-trust laws, the same court noted that

> the acts complained of occurred in an independent contract between the power company and its suppliers, none of whom are subject to Commission jurisdiction.[6]

The proceedings in 1956 were under Section 7, as they are here, and the Commission's concern with the contract between the utilities and their suppliers, and with the rates for the transportation service, was tied to the economic feasibility aspect of the project, and to the "public interest" aspect of a Section 7 certificate proceeding. Using the data before it, the Commission found that there was a defect in the rate structure. For the third year of operation, it found that costs and revenues would be in balance for the pipeline's firm sales for resale, and that revenues on the preferred interruptible sales would exceed costs, 33 cents/MMBtu to 26.3 cents. The Commission also noted that the cost per million Btu for the transportation service would be 16.1 cents compared to revenues of 14.2 cents. For these reasons, and because it felt that the clauses which would permit the utilities to cancel the arrangement could not be allowed to stand, the Commission conditioned the certificate to the pipeline on the filing of rate schedules and service agreements, including transportation service for the utilities, "commensurate with the cost of service determined on a reasonable allocation of costs between these (various) services in accordance with the usual Commission standards and based on an annual rate of return of not in excess of 6 percent," and elimination of provisions for cancellation or reductions in taxes for the schedules and agreements for the transportation of gas."[7]

The Florida project, notwithstanding the doubts of the two dissenting Commissioners, quite obviously succeeded. The arrangements originally approved have been extended on several occasions since, to a present authorized capacity for the pipeline of 444,060 Mcf per day. The most recent certificate was issued the day preceding the filing of the application here, June 8, 1965, Docket No. CP65-165, 33 FPC 1223. In that proceeding Florida Gas was authorized to loop approximately 20 percent of its main line to increase the capacity by 85,000 Mcf per day, for its customers other than transportation customers.

In the present proceeding, the applicant asks authority to loop an additional 60 percent of the main line between south Louisiana and south Florida at a cost of approximately $93,200,000. Such looping would increase the capacity of the line by 192,000 Mcf per day.

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[5] 251 F. 2d 643, 646.
[6] *Id.* at 647.
[7] 16 FPC 118, 144.

Turning now to more recent developments, Florida Power and Light Company (FPL) in 1963 began negotiations to increase its supply of natural gas to fire its generating plant boilers. Some of these negotiations were with the pipeline, Florida Gas, but comparatively early in the process, the utility concentrated its endeavors toward getting a contract with the producers, Pan Am and Austral. These two producers, it may be noted, have been certificated in separate proceedings to deliver to the pipeline an average daily volume of 80,000 Mcf. The FPL transportation gas and the producers' certificated sale to the pipeline together will entirely utilize the capacity of an extraction plant under construction by Pan Am at East White Lake, Louisiana.

The negotiations for a further gas supply for FPL culminated in the execution of a series of contracts on March 12, 1965. FPL contracted with Pan Am and Austral to buy from them 100,000 MMBtu per day for 1967, and 200,000 MMBtu per day in 1968 and subsequent years for twenty years, or until a total volume of 1,424,500,000 MMBtu is delivered, whichever is first.

FPL agreed to take this gas from Pan Am and Austral at the discharge side of the East White Lake extraction plant.

Also on March 12, 1965, as an integral part of the transaction, carrying the same expiration date, FPL and Florida Gas agreed with each other concerning the transportation of the gas purchased by FPL from Pan Am and Austral.

Under the FPL–Florida Gas contract, Florida Gas will move gas from the East White Lake delivery point (or other mutually agreed points) to specified plants on FPL's system. Most of these points already receive gas through the Florida Gas facilities, under the arrangement certificated in 1956.

The FPL–Pan Am contract is a warranty contract, whereby Pan Am warrants and agrees that it will provide on a daily basis the contract volumes of gas. In aid of its warranty, the contract provides that if acceptable to FPL and Florida Gas, Pan Am may offer gas at other points than East White Lake. The contract which the Commission approved in CP65–165, the proceeding involving the Pan Am sale to Florida Gas, was similar.

The contracts of March 12, 1965, are the focal point of this proceeding. The nature of the Commission's concern was noticed in the order setting the case for hearing, issued January 17, 1966, 35 FPC 81 and published in the Federal Register.[8] That order provided that Florida Gas "show cause why Pan American Petroleum Company

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[8] 31 F.R. 919, January 22, 1966.

(Pan Am) and Austral Oil Company (Austral) should not be subject to the provisions of the Natural Gas Act."

The decision of Presiding Examiner Kurtz denied the certificate without prejudice, suggesting the parties recast their agreement. The basis for his action was his conclusion that "the usual transportation arrangement is not present in this proceeding." He did not discuss or compare the 1956 contractual arrangements, as to which most material features appear to be similar or identical, including specifically the fact that the gas delivered to Florida Gas would be commingled in the transmission system with other gas received directly or indirectly from other producers.

Besides finding that "the usual transportation arrangement is not present" the Examiner found that the "transportation contract (is) only a matter of contractual convenience," and said that contract arrangements "cannot be used to deprive the Commission of jurisdiction over the sales of gas by Pan American and Austral. He pointed out, and this is not contested, that the "Pan American and Austral gas moving from the East White Lake plant under the designated transportation contract cannot be sufficiently identified so as to consider it as being gas transported apart from other gas purchased by Applicant (Florida Gas) and sold both for direct use and for resale."

Another feature of the physical arrangement, clearly contemplated by the parties, is that the entire stream either passes, or is contractually permitted to pass, through the plant of Florida Hydrocarbons. This latter company and Florida Gas are both subsidiaries of the same parent. At this plant, located in Florida, liquefiable hydrocarbons are removed. Florida Gas warrants that it has the right to make the delivery to Florida Hydrocarbons. FPL is contractually entitled to the same number of British thermal units it purchases from Pan Am and Austral.

It is the gravamen of the Examiner's conclusion that jurisdiction over the "sale of gas by Pan American and Austral" is a paramount regulatory objective. To accomplish this objective, he would withhold the certificate to build the facilities to carry the gas until the parties "work out new arrangements in accordance with the requirements of the Natural Gas Act." Such new arrangements, under his approach, would have Pan Am and Austral sell gas not to FPL, but to Florida Gas, and would have Florida Gas, in turn, not transport gas for FPL but sell gas to it.

Turning first to the Examiner's observation about "contractual convenience," we do not take "contractual convenience" to be by itself reprehensible. The arrangement is neither new nor novel, and represents only technical changes from an arrangement in effect for ten years and affirmatively approved by this Commission. Whether the producer-utility contract is jurisdictional is the legal issue before us, and no wrongful intent can be found in the conduct of these parties.

The arrangement suggested by the Examiner has the merit of straightforwardness. It would make the sale from Florida Gas to FPL a nonjurisdictional direct sale. This would have the effect of achieving jurisdiction over the producer sale by yielding jurisdiction over the transportation.

The Commission Staff Counsel (Staff), recognizing this anomaly, urged upon the Examiner a different approach. The Examiner rejected it, and Staff has urged it again upon us, in its Brief on Exceptions. We also reject it.

Under Staff's approach, the contractual arrangement would be construed or interpreted in such a way as to preserve jurisdiction over the transportation, and at the same time achieve jurisdiction over the producer sale. The only "untoward" or "incidental" effect would be the metamorphosis of FPL into a "natural-gas company" under the Natural Gas Act.

Contending that the approach or result is required by *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965), (Lo-Vaca), Staff submits an analysis of the transaction which has Pan Am deliver possession of 200,000 MMBtu of gas molecules to Florida Gas at East White Lake, with possession only in Florida Gas, title in FPL. In the process of being transported, FPL's 200,000 MMBtu of gas molecules commingle with the other gas molecules in the transmission line, so that Florida Gas delivers different ones than it received. Quoting Staff Brief on Exceptions:

> This delivery of different gas molecules to FPL constitutes an exchange; that is it is a sale by FP&L of 200,000 MMBtu of gas molecules to Florida Gas in consideration of Florida Gas' delivery of 200,000 MMBtu of different gas molecules to FP&L. In substance, the consideration (i.e., 200,000 MMBtu of gas molecules) which flows from Florida Gas to FP&L is a defined, exact price paid by Florida Gas for the title to FP&L's gas molecules which Florida Gas obtains.

The Examiner's rejection of this approach is on the stated ground that it would make FPL a natural gas company. He apparently felt that the ramifications of this were such that elaboration on his part was unnecessary.

The key to Staff's position is found in this sentence:

> As designed by the parties, the present proceeding would create a class of producer sales in interstate commerce which is free from effective rate regulation.

This, then, is another "gap" case. The language of the Supreme Court in *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S.

1 (1961), (X-20), that the "Congress did not desire an 'attractive gap' in its regulatory scheme," and that it "intended to impose a comprehensive regulatory system on the transportation, production, and sale of this valuable natural resource" is the umbilical cord to an assertion of a Congressional intent to favor regulation of producer sales over the regulation of transportation.

This may be. But we do not think the Supreme Court has said so yet, and we do not propose to say so here. We do not agree with Staff that Lo-Vaca requires it.

Section 1(b) of the Natural Gas Act brings federal regulation to two distinct activities: transportation of natural gas in interstate commerce, and sale in interstate commerce of natural gas for resale.

Sale for resale in interstate commerce, under *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), and subsequent cases has been construed inclusively. But no case has yet gone so far as to find a Congressional intent to bring direct industrial sales by producers *ipso facto* within the ambit of the statutory term, in the fashion Staff argues to be required by Lo-Vaca. Nor has any case yet indirectly interdicted such sales by requiring the parties to recast their contracts as a condition of the grant of a certificate to construct the necessary facilities, in the fashion of the Examiner's conclusion.

It avails little, with so many judicial pronouncements before us, to seek Congress's intent on this matter in the words of the statute alone. However, with specific reference to the Examiner's approach, we point out that if the effect of our decision were to downgrade our responsibility to regulate interstate transportation of natural gas, as compared with our responsibility to regulate sale for resale, we would be writing a priority into the statute not evident on its face.

We need not go outside the antecedent case to this one to see how far the first clause of Section 1(b) may be carried toward achieving the substance of a comprehensive regulatory system. Therein [9] the Commission conditioned the grant of a certificate upon the filing of new rate schedules, including the transportation rate for carrying gas for FPL, the elimination of certain cancellation clauses, and allocations in a cost-of-service formula.

The Court of Appeals for the District of Columbia affirmed the Commission in this language:

> Petitioner questions whether the Commission has authority to transform a defective proposal into a valid one by the addition of curative conditions. The argument is made that the Commission may attach conditions to valid proposals, but not to invalid proposals such as the present one would be but for the conditions. It is sufficient to say that the Natural Gas Act spe-

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[9] Houston Texas Gas & Oil Corporation and Coastal Transmission Corporation, *supra*, note 1.

> cifically authorizes the grant of a certificate subject to "such reasonable terms and conditions as the public convenience and necessity may require." We see no error here. (Footnotes omitted.)

The Supreme Court has affirmed the Commission's "power to lay down conditions precedent to the entry of natural gas into interstate commerce." [10]

Under Section 7(e), the Commission's authority to lay down limitations is as broad as the public interest.[11]

Among the public interest factors considered, besides the rate conditions in *Houston Texas* [12], are the "end use" to which the gas is to be put.[13]

In Gulf Pacific [14] certification was conditioned upon the filing of rates based upon a cost of service adjusted to reflect specified rates of return. In the same opinion, the Commission discussed without deciding its possible power to condition a pipeline certificate to control field prices. It suggested, by way of dicta, that the Commission could condition "to make the initial field price no higher than would be authorized under a jurisdictional sale in the area" or "adjust the price down if in the future it were to be determined that the just and reasonable price for sales of gas were lower than the initial price." [15]

As stated, however, no case has yet squarely presented the outer limits of the Commission's power to condition a certificate to a pipeline transporting gas sold by an owner who is not a producer to the ultimate consumer in a nonjurisdictional direct sale.

Such cases as there are do not rule out such authority. Nothing in the cases would justify our saying the regulatory tool of conditioning a transportation certificate up to and including a control of the field price, would not be possible as well under the first clause of Section 1(b) covering transportation, as under the second clause, covering sales for resale.

It is the judicial preoccupation with the "attractive gap" which has led to the emphasis on the second clause. The import of what both Staff and the Examiner see as the desired end result would be to interdict direct industrial sales. The Examiner would hold over the parties the club of certificate denial until they reached the result "voluntarily." Staff would reach jurisdiction as a legally necessary interpretation of what the parties really did. Both would use as authority the Supreme Court's statement about the Congress's desire not to have an attractive gap in the regulatory scheme.[16]

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[10] *F.P.C.* v. *H. L. Hunt*, 376 U.S. 515, 526 (1964).

[11] *Atlantic Refining Co.* v. *P.S.C. of N.Y.*, 360 U.S. 378, 391 (1959) (CATCO): *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 8 (1961) (X-20); *U.G.I.* v. *Callery Properties, Inc.*, 382 U.S. 223 (1965).

[12] Cited *supra*, note 1.

[13] *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, (1961).

[14] Transwestern Pipeline Company, 36 FPC 176, Opinion No. 500, July 26, 1966.

[15] *Ibid.*

Direct industrial sales at the field, of the type before us here, apart from our earlier consideration of them in *Houston Texas* are not to be found in the cases. By dicta, as stated earlier, they have been recognized by the Supreme Court, X–20, as not within the sale for resale clause of Section 1(b).

But an equivalent result was approved both by the Commission and by the Third Circuit in *Transcontinental Gas Pipe Line Corporation*, 33 FPC 237 (1965), affirmed *sub nom. Public Service Electric and Gas Company* v. *F.P.C.*, 371 F. 2d 1 (CA3–1967). (Texaco-Transco).

The commingling in Texaco-Transco is indistinguishable from that in this case, and there the commingling theory was rejected. Indeed in that case, Staff urged the exchange-sale approach[17] in virtually the same language as urged upon us. The Commission's opinion described the contended-for theory, and furnished the Commission's response, thusly:

> Staff and the New Jersey Intervenors argue that our decision in Lo-Vaca requires us to view the instant transaction as one involving a sale by Texaco to Transco and a (nonjurisdictional direct industrial) resale by Transco to Texaco. In essence, Staff reaches this conclusion on the basis of commingling, *i.e.*, different molecules of gas being redelivered by Transco to Texaco. We disagree with this position.
>
> Initially, we note that the issue present in Lo-Vaca, *supra*, was whether arrangements, which concededly were sales, were in interstate commerce or for resale, and hence subject to Federal regulation under the Natural Gas Act. The issue here, on the other hand, is whether in the circumstances of the case there is

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[16] *Id.*

[17] As a parenthetical observation, we note here that the same rationale was urged in a footnote in the Commission's Brief to the Supreme Court in Lo-Vaca, to help the Supreme Court distinguish Lo-Vaca from the already decided X–20 case. It will be remembered that in X–20, the Court's dictum was that direct industrial sales were not subject to Commission regulation. At page 22 of that Brief is the following footnote:

> We suggest that a sound analysis of the transaction in Transcontinental, [X–20] consistent both with the facts of gas flow and with the price arrangements formulated by the parties, would be as follows:
>
> The producer has made a sale of gas to Edison in the field. Edison, in turn, has entered into an exchange agreement with Transco, under which (a) Edison delivers that gas to Transco in Texas; (b) Transco delivers an equivalent volume of gas to Edison's generating plant in New York: and (c) Edison pays Transco a fee for transporting the latter gas to New York. Since the gas purchased by Edison in the field was immediately resold (i.e., exchanged for equivalent volumes) to Transco, the field sale is subject to the Commission's jurisdiction. The same is true of Edison's sale to Transco (or exchange with it), since the gas would be used by the pipeline for resale to its regular customers. The reciprocal sale by Transco to Edison of equivalent volumes in New York would be a sale for direct consumption and therefore non-jurisdictional * * *.

> any sales relationship between Texaco and Transco which is subject to Commission jurisdiction as such, or whether the proposed transaction is a transportation service under Sections 4, 5 and 7 of the Act.
>
> We conclude that the mere physical commingling of Texaco's gas in Transco's lines with gas Transco has purchased for subsequent resale does not compel rejection of the historic notions of bailments and require us to transform the transportation agreement into a succession of sales, by Texaco to Transco and again by Transco to Texaco. An essential feature of this transaction is that Texaco is the owner of the gas both at the beginning and the end of its journey from the wellhead to the point of ultimate consumption. It has merely contracted for conventional transportation arrangements subject to the Commission's jurisdiction. While transfers of gas from a producer to a pipeline or from a pipeline to a direct customer may be treated as a sale for regulatory purposes in appropriate circumstances, we see no reason to do so in the circumstances of this case where it is clear that the intermediate transactions result in returning the gas to the original producer-owner and no jurisdictional question is involved. In reaching this determination we do not decide the status of the other types of transactions, such as that presented in the X-20 case.

The Third Circuit affirmed this analysis, quoting directly the first half of the final paragraph in our quotation of the opinion above. The court's own language on the exchange analogy was as follows:

> If the contract is construed as covering nothing more than a conventional arrangement for the transportation of natural gas for hire then the only aspect of the transaction subject to the Commission's jurisdiction was the transportation. The latter construction, adopted by the Commission, is here challenged as erroneous.
>
> The parties to this proceeding admit that in the transportation operations gas delivered by Texaco to Transcon in the field would be commingled with gas purchased by Transcon for subsequent resale. The petitioner maintains that under these circumstances the arrangement between Texaco and Transcon would involve an exchange of gas made available by Texaco in the field for commingled gas ultimately redelivered by Transcon at West Deptford. With this as a premise it argues that the arrangement must be treated as involving a sale of gas in interstate commerce for resale, subject to the jurisdiction of the Commission. We do not agree. An essential ingredient of an exchange is a transfer of title, and this was clearly not intended by the parties. The arrangement between Texaco and Transcon

would involve nothing more than the bailment of a fungible commodity. BROWN ON PERSONAL PROPERTY, 2d Ed. § 78; 8 AM. JUR. 2d Ed., BAILMENTS, § 40

Two factual differences exist between Texaco-Transco and the case before us. One is in Texaco's status as "producer and owner," which was emphasized in the opinion by its statement that "Texaco is the owner of the gas both at the beginning and the end of its journey from the wellhead to the point of ultimate consumption." The other is the presence here of the contractual provision permitting the gas to be processed through the plant of Florida Hydrocarbons, Article XI.4 of the transportation contract.

Turning our attention first to the latter point, we note that the existence of this feature did not attract the Examiner to the jurisdictional theory urged upon him by Staff. Reviewing the transaction, our analysis leads to the same conclusion.

In the case before us, FPL is a party to two contracts, one for the purchase of gas from the producers, and one for the transportation of gas by the pipeline. FPL is not a party to the contract between Florida Gas and Florida Hydrocarbons. The latter contract antedates the 1965 contracts which are before us by five years, and it is the 1960 contract, not a contemporaneous agreement, which is applicable to the gas presently being transported by Florida Gas pursuant to its contracts with utilities which were before the Commission in 1956, and which will be applicable to the 1965 contracts. The business arrangement for removal of hydrocarbons is not new, although the 1965 transportation contract naturally recognizes its existence.

It may be argued that the fact of processing of transportation gas precludes a nonjurisdictional sale; in other words that the removal of liquefiable hydrocarbons by Florida Hydrocarbons for Florida Gas, with the economic benefit or detriment of this operation being shared in some manner between Florida Gas and Florida Hydrocarbons, necessarily changes the physical volume; that this causes an attendant change in the incidents of legal title; and that the result is that the producers sale to FPL has to be considered jurisdictional.

Such an argument, aside from being more legalistic than practical, overlooks that FPL has an interest in the processing of the gas in order to assure a fuel of uniform quality. The pipeline obligates itself to remove the impurities, including liquids.

This Commission's jurisdictional reach does not extend to the liquid products. If it should be assumed that FPL achieves economic advantage by the processing of the gas to remove impurities, does the fact that FPL's impurities are a by-product asset to the transportation company, have the effect of rendering the transaction jurisdictional? Such an argument presupposes regulatory rigidity, a disposition to look to form rather than substance. We find no special regulatory significance in this arrangement.

Associated with this argument is the argument that there is significance in a hypothetical change in volumes related to fluctuations in Btu content at the field, compared to a uniform Btu content at the boiler.

The 1965 contracts were framed in volumetric rather than heat content terms, but in legal and practical effect they were identical to the present contractual arrangement. The 1965 contracts defined volume as a function of heat content, whereas the present transportation contract defines heat content as a function of volume.

The practical reality is that FPL is interested in energy, and its arrangement with Florida Gas provides for it to get the same amount at each end of the line. Florida Gas binds itself to see that it does so, agreeing to make up shrinkage from whatever cause, including that incidental to the removal of liquefiable hydrocarbons.

It is highly artificial to extrapolate from the admitted variable of the heat content of gas at the field to the contractually assured uniformity of heat content at the boiler to find that the fact that there is a change makes commingling determinative on the question of jurisdiction. The argument is as broad as it is long, for the volumes for given heat values might at one time be greater, at another time lesser, than those delivered at the East White Lake delivery point. Arithmetic on this point could be pursued endlessly.

The other difference, Texaco's status as "producer and owner," is, absent specific case authority on all fours, subject to argument. Nevertheless we think a fair reading of the Third Circuit's opinion would indicate that that Circuit, at least, would find the Florida Gas transaction even further removed from the ambit of Lo-Vaca and Amerada than Texaco-Transco was. In accordance with the reasoning followed by Judge Smith, we find Lo-Vaca and Amerada not in point. Both involved attempts on the part of a jurisdictional pipeline to differentiate gas on a jurisdictional-nonjurisdictional basis by contract, either as to the nature of its use (Lo-Vaca) or the place of its use (Amerada).

We see no rational way to hold that commingling is irrelevant in Texaco-Transco and, at the same time find it fully controlling here. To make such a distinction would be to concede that form, not substance, controls us.

As to the argument that there does remain an unclosed gap, it is our view that generally when the Commission or the courts have been constrained to close a "gap," the closure has been made to achieve a more worthy objective than regulatory symmetry. It isn't the gap, but the potential evil, that the Commission must examine.

These "evils" have been of various sorts. In X-20, the identified evils were inferior use or increased prices to consumers. Possible detriment to jurisdictional consumers is an evil identified in Gulf Pacific.

It is possible to engage in all sorts of speculation about the results which will flow from this decision. In the view of the majority, the arguments seem particularly unimpressive in the fact situation here. As to future cases, we think our discussion has indicated we have no intention of abdicating any regulatory tool.

Florida's subtropical climate, and the peculiarities of gas service to that State were discussed by the Commission in 1956.

The pattern of operation of the pipeline of Florida Gas will not be significantly changed by the grant of a certificate in this case, except in the total volume. It now operates at a load factor in excess of 95 percent, and will continue to so operate under its expansion plans. Using the Company's figures, the cost savings resulting from Florida Gas' expansion will result in rate reductions in its present rates of $1,374,938 a year. Of this amount $404,038 is applicable to sales for resale. (Rate Schedule G) and would benefit customers in Florida. The remainder is applicable to the T-1 and T-2 transportation schedules where reductions, however, would be offset in large part by increased payments to the producers under the contractual arrangement. The reductions, of course, are dependent upon determination of costs, allocations and rate design, but the Commission, as long as it has jurisdiction over the transportation of the gas, has ample authority to adjust those matters.

An important consideration in our decision here flows from the nature of Florida gas operations which we believe is dictated largely by the unique conditions which prevail in the Florida fuel market. As the Commission recognized in 1956, Florida is a fuel deficiency area and must depend almost entirely on imported fuels.[18] This factor, plus the ease of transporting natural gas, makes this particular type of arrangement more important there than elsewhere in the country. Because of the mild climate which prevails and the low degree-day deficiency the load factor of any pipeline supplying Florida would be relatively low if it were not for the firm industrial consumption and transportation of gas such as is contemplated here.

In other words, as to end use, the purport of the case made to the Examiner would appear to treat this factor as a plus, not a minus. Not a hint is found in the record that the proposed end use of firing the utility company's boilers is anything but an advantage.

Gulf Pacific does leave us still with the question of control of producer price. Although that case and others we have cited leave open the door to effective control even of this aspect through conditioning the transportation certificate, the issue must be squarely met.

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[18] 16 FPC 118, 122.

To do this, we must look to what we might accomplish if we were to treat the sale as a jurisdictional sale from the producers to the utility company, or to the pipeline. If this were a jurisdictional sale either from Pan Am to Florida Gas (Examiner's approach) or from Pan Am to FPL (Staff's approach), Pan Am would be required to seek a certificate of public convenience and necessity for the sale, and submit for Commission review any subsequent changes.

The price is the most important consideration in this certification process. The contract price for the producer sale to the utility, converted to an Mcf basis, is 18.77¢. This is within the guideline ceiling in Southern Louisiana, which is 21.25¢ for taxable gas, 19.5¢ for non-taxable gas. Whether it is above the "in-line" ceiling fixed in *Union Texas Petroleum*, 32 FPC 254, depends on the mix of taxable-nontaxable gas which may eventuate. At most, it would exceed the in-line by 0.27¢ per Mcf.

In addition to the initial price, producer regulation controls also contractual escalation. There is, it may be argued, the prospect or possibility that the parties could agree to higher prices, and there is in the contract, an escalation effective ten years hence to 21.2¢ per MMBtu, or 22.1¢ per Mcf.

As to the parties agreeing to higher prices, not only the posture of the case, but the predecessor case and common sense tell us that other pressures than regulatory pressures by the Federal Power Commission influence prices in complex situations like this. The Examiner pointed out that FPL had a ceiling of its own, 34¢ per MMBtu delivered, as it began its negotiations in 1963. The whole thrust of the argument in the original certification proceedings was that competitive fuel prices would keep the price so low that the economic soundness of the project would be endangered. Commissioners Connole and Kline dissented on this ground.

Price competition of other fuels cannot be anticipated to disappear completely, however much it may be lessened by public pressure for sulfur-free fuel for electric generation. Pan Am and Austral seem to us to have bound themselves more restrictively than we would have bound them, if a certificate to them were at stake here.

The discussion in Gulf Pacific about an invitation to large industrial users being invited to make their own arrangements with producers was answered in Gulf Pacific itself, in the discussion on the power to condition certificates for transportation.

At this point, we are not so much concerned with how far we might go in conditioning a transportation certificate as with what the public interest requirements are in the case before us.

This really boils down to the question, therefore, whether the producer price cries for control. If the record of this case indicates that it does, it is for control's own sake, and not for any discernible regulatory goal in the present situation. Neither on a price basis nor on the matter of desirability of maintaining the integrity of the jurisdictional market can it be said that the instant case is an attractive vehicle to extend jurisdictional perimeters.

If the producers take 82% of their gas from off-shore sources and 18% on-shore, the contract price of 18.0¢ per MMBtu, converted to an Mcf basis at 18.77¢ (18.0 x 1043), would be at the in-line level determined in Union Texas. (18.5¢ x 82% + 20.0¢ x 18% = 18.77¢)

Pan Am, based upon statements in its Reply Brief to the Examiner appears to feel that a ratio of 85% off-shore gas to 15% on-shore gas, would give it adequate operational flexibility. Since each percentage point increase in the off-shore portion of the mix would cause the contract price to exceed the in-line level by .015¢ ($0.00015) per Mcf, up to the maximum referred to above of .27¢ ($0.0027) per Mcf if all the gas came from off-shore sources, an operating ratio of 85%–15% would cause the contract price to exceed the in-line price by .045¢ ($0.00045) per Mcf.

We have the authority to attach a condition to a transportation certificate requiring the pipeline to assure that the producer-utility contract price be adjusted. The question is not whether we can condition but whether the public interest requires that we do so.

Before discussing conditions, however, we must also deal with the price provision of the contract calling for escalation after ten years to 21.2¢ per MMBtu, which converts to 22.1¢ per Mcf, assuming 1043 x MBtu per Mcf.

If this were a jurisdictional sale, our sales provide that we would not be required to object to contract provisions calling for escalation of 1¢ per Mcf, each five years. On that basis, at least prima facie we would not object to a contract which called for 18.5–20.0¢ for five years, 19.5–21.0¢ for the next five years, 20.5–22.0¢ for the third five years, and 21.5–23.0¢ for the last five years. On this basis, assuming the 82%–18% mix continues for the second five years, the present contract price would be 1¢ per Mcf below the hypothetically adjusted in-line price for that period and would be .73¢ per Mcf below the hypothetically adjusted in-line if all the gas were off-shore for that period. For the third five-year period, after the escalated contract price were in effect, again assuming 82–18 ratio off-shore/on-shore, the contract price would be 1.33¢ per Mcf higher than the assumed hypothetically adjusted in-line ceiling for the third five-year period, and .33¢ higher than the assumed hypothetically adjusted in-line ceiling for the fourth five-year period.

Assuming, as we have, that we would not initially suspend escalations of this magnitude if this were jurisdictional, and assuming an 82–18 mix of off-shore and on-shore gas, we find that the Florida consumers are protected at a level equal to the in-line for five years, have a one-cent advantage for the next five years, pay 1.33¢ more for the third five years, and .33¢ more for the last five years, all per Mcf.

We have also computed the present value, at a six percent discount rate, of the contract before us with the ten year escalation provision, and the present value of the hypothetical in-line rate with permissible escalation of one cent at five-year intervals. On this basis, the equivalent level price of the contract is 19.967 cents per Mcf and the equivalent level price of a hypothetical escalated in-line is 19.914 cents per Mcf, or a difference of .053 cents per Mcf—both assuming 18% of the gas comes from on-shore.

One important aspect of the arrangement presented to us is the certainty as to both price and supply which the utility and its consumers have contractually achieved. This certainty is not absolute—few things in this world are. The transportation rate remains subject to our regulatory control, and it may be that this part of the total cost will change, perhaps causing an increase in the final price to the utility and its consumers.

This illustrates the point, and the necessity for the process of weighing, as best we are able, the considerations on each side of the balance. For the just and reasonable rate which would be the maximum (but not the minimum) if this were jurisdictional is not now known, and when it is finally determined it may from time to time change in the same manner as transportation rates.

If we were to condition this 7(c) certificate to future conformance with the just and reasonable rate, we would deny the utility and its consumers the certainty of supply and field price which has been negotiated. This could not be done without taking the view that the second clause of Section 1(b) of the Natural Gas Act is indeed paramount, and that the Congress intended that all natural gas sales must either be jurisdictional, or treated exactly as if they were jurisdictional. We decline to do this.

Our analysis has shown the scope of the differential between the contract price and the price level which, if embodied in a contract conforming to present policies, would not be required to be rejected. We cannot find any threat to the price line, except on a purely speculative basis which would assume the course of presently pending proceedings. This would be completely improper.

Throughout our analysis, we have assumed a mix of off-shore, on-shore takes. Should we now condition to make our assumptions valid?

Our conclusion to do so is aided by the statement of the producers in an early brief that an 85–15 mix would give adequate operational flexibility. Not only to sustain the validity of the comparisons we have made, but in order to give further assurance that this transaction will have no adverse effect on the jurisdictional market, we have decided to condition the certificate to the pipeline upon the filing with us by the producers of appropriate assurances of their willingness to adjust their takes so that not more than 85% of the gas comes from off-shore sources, not subject to tax. Reports of compliance should be made annually, with the net balance to be achieved at the end of each five-year period from the date of first deliveries.

With this condition we are convinced that any significant dangers to the jurisdictional consumers from the sale are eliminated and that any further condition would only eliminate useful certainty for no foreseeable gain.

### *Rates*

Florida Gas proposes to transport gas for FPL from the East White Lake plant of Pan Am to Florida, and proposes a new schedule of rates including its resale rate and transportation rates. Florida Gas' rate history shows a settlement on June 8, 1962, in which its resale rate (G) became 57 cents per MMBtu, its rate for transportation to Florida Power became 14.5 cents per MMBtu (T–1) and its rate for transportation to FPL became 18.5 cents per MMBtu (T–2) (27 FPC 1123). When the Commission approved Florida Gas' application for additional facilities on June 8, 1965, it conditioned the certificate to require that Florida Gas not increase the G rate above 57 cents (or, as long as that rate is in effect, the interruptible rate I above 33 cents) prior to the expiration of the first three years of operation of the expanded system or January 1, 1970, whichever is earlier, except for increases in costs due to taxes (33 FPC 1223, 1225). Florida Gas, however, did file an increase in its T–1 rate to 17.9 cents and in its T–2 rate to 21.9 cents, and these increased rates were suspended and permitted to become effective November 1, 1965, in Docket No. RP66–4.

In the present proceeding Florida Gas offers to reduce its G rate from 57 cents to 54.7 cents, its T–1 rate from 17.9 to 16 cents and its T–2 rate from 21.9 cents to 20.0 cents. Its proposed new schedule T–3 for its transportation to FPL would conform to the March 12, 1965 contract rate of 16.0 cents per Mcf (where Mcf is defined as equivalent to MMBtu) and would be identical to the T–1 rate to Florida Power, thus preserving the historical 4-cent differential for the longer haul from Texas as compared to Louisiana. Staff contends that the T–3 rate should be increased and the other rate schedules adjusted to reflect costs. Florida Gas objects to increasing T–3 and to any general rate adjustment other than its own proposal in this proceeding.

Sun, whose 20-year contracts with FPL and with Florida Power Corporation were approved by the Commission in 1956, takes a third position. Sun's contracts with the two utilities bind it to reduce its price to reflect any increase in the transportation cost. It argues that the T-1 and T-2 rates proposed in Florida Gas' application herein should be reduced further and the proposed 16-cent T-3 rate increased to 17.6225 cents with the ultimate determination in a subsequent proceeding. Further, Sun points out several other matters which it thinks should be corrected in these proceedings as discussed below.

The Examiner did not fix rates; he considered that review of Florida Gas' rates should be carried out only under Section 4(b) or 5(a) of the Natural Gas Act since the earnings were clearly sufficient for the purposes of the certificate proceedings.

There is nothing in the Act or the cases that limits us in treating the pipeline rate issue here. The problem is more practical than legal. We could under the Act hold a rate proceeding with every certificate proceeding except that the time consumed could be intolerable. For this reason we said in our order of January 17, 1966, that "It is incumbent upon the hearing examiner to entertain in this proceeding only such evidence as may be relevant to a certificate case." We therefore do not think it appropriate here to make a determination of Florida Gas' costs, to make an allocation of the costs to the company's several rate schedules, and to determine rates for Florida Gas in this proceeding.

The proposed 16 cent T-3 rate, we are aware, is directly before us for initial consideration. Florida Gas' evidence shows that it reflects competitive pressure, an adequate incremental return and benefits to other customers because of the low-cost expansibility of the system. The evidence does not indicate that the 16-cent price is less than the cost of rendering the service but it may yield less than its share of the return on the entire system. No determination of the proper rate level for T-3 can be reached without consideration of the other rates; and the level of T-3 affects them also. The entire rate proposal of Florida Gas in this certificate proceeding and the various questions of rate design can be determined in a separate proceeding and in such proceeding just and reasonable rates can be determined under the G, I, T-1, T-2 and T-3 rate schedules.

By the March 12, 1965, transportation contract Florida Gas undertakes not to file revised tariff sheets with this Commission requesting rates in excess of 16.0 cents per Mcf for a 5-year period commencing with the first delivery of gas or January 1, 1973, whichever is first.

Such a moratorium would prevent Florida Gas filing a rate in excess of 16 cents per Mcf even in response to a rate order so that Florida Gas might not earn a full return if other rates were correspondingly reduced. Therefore to permit the adoption of just and reasonable rates for transportation and resales, by Florida Gas as determined in the rate proceeding, the moratorium should be eliminated. For the same reason, the companion moratorium offered by the Company with respect to its Rate Schedules T-1 and T-2 will not be accepted.

In view of these considerations, as a condition to the certificate issued to Florida Gas we shall provide that the rates to be effective when these new facilities go into operation be those proposed by the company: 54.7 cents for G, 16 cents for T-1, 20 cents for T-2 and 16 cents for T-3. By further order we shall institute rate proceedings to determine the just and reasonable levels for these rates.

In our order herein we shall require the filing of the rates proposed under the G, T-1 and T-2 rate schedules within 30 days and in doing so are, in effect, waiving Section 154.22 of our Rules under the Natural Gas Act, which provides that tariffs shall not be filed more than 60 days prior to the effective date thereof. Upon the filing of the proposed rates we shall institute a rate investigation; in the event that the rate determinations have not been made before the effective date of the proposed rates, we shall suspend the rates under the rate schedules G, T-1 and T-2 for not more than one day.

Sun advocates an increase in the T-3 rate and, in addition, would eliminate the favored-nations clause in the transportation agreement of March 12, 1965. This provision states that if Florida Gas transports gas for a third party for a more favorable rate, Florida Gas shall use its best efforts to make T-3 conform. Any such change in T-3 would be subject to our jurisdiction and a future allocation of costs that is not before us in these proceedings.

Sun also contends that the permitted outlet points for gas should be only at the East White Lake delivery point or downstream. Pan American points out properly that it needs the flexibility of alternate delivery points and that it has contracted to bear the additional costs. In addition, Sun argues that Florida Gas is proposing to build a second lateral to the East White Lake delivery point although it would have saved $3,000,000 if it had originally built one larger lateral. Actually Florida Gas had sought to build one large line in the previous docket (CP65-165), but, in order to avoid delay because of opposition from Sun, built a smaller line. Since the Commission has granted a certificate for the smaller first line, it would not be appropriate in this proceeding to exclude the costs of the second line.

### *Air Pollution*

The Florida State Board of Health and HEW have argued the importance of natural gas in abating air pollution in Florida. HEW particularly requests, although it did not file exceptions, that the additional gas deliveries be approved on condition that they be used by FPL at its Port Everglades, Fort Lauderdale, Riviera and Cape Kennedy plants, which are near populous areas, rather than the Turkey Point plant, which is in a swamp. The staff contends that the air pollution evidence is inadequate.

There is some evidence of air pollution in the record such as complaints from individuals and municipalities, photographs of yellowish-brown plumes from power plant stacks and testimony as to discoloration of the roofs and walls of buildings said to be caused by sulfur oxides. The Florida State Board of Health introduced a computation to show the concentration of $SO_2$ that would be produced by the Port Everglades power plant under several assumptions and varying atmospheric conditions. Witnesses point out that some of the areas served by FPL's plants are visited by tourists seeking to escape pollution elsewhere and inhabited by retirees who are more sensitive than younger individuals. HEW states that FPL's plan to burn a mixture of only 30 percent gas in order to eliminate visible plumes is inadequate to meet the need for the control of air pollution.

The Examiner, we think properly, agrees with the Staff that the evidence is deficient. While the calculations show that ground level concentrations of $SO_2$ in the vicinity of the Port Everglades, Riviera and Cape Kennedy plants could exceed one part per million, these studies were theoretical, based upon the burning of fuel and assumptions as to atmospheric conditions, not on actual measurement of $SO_2$ concentrations in the vicinity of the power plants. It seems significant that HEW did not file exceptions. While we are certificating the total volume of gas sought in this proceeding, in view of this state of the record, we do not believe we would be justified in modifying the proposals made here so as to require the gas to be burned in any particular plant. However, important considerations are presented on the question of air pollution and the utility, in our opinion, should cooperate with the appropriate health authorities on the place of the use of this gas.

### *Gas Supply*

It has come to the Commission's attention that Pan Am has advised FPL of its intention to terminate as of January 10, 1967, the MMBtu purchase contract dated March 12, 1965, but the applicant, Florida Gas, has not filed with the Commission any notice that the contract has actually been terminated. When a similar problem was raised recently in the *Gulf Pacific* case (Opinion No. 500), the Commission, prior to issuing its final decision, required the parties to file statements with the Commission affirming that the gas supply contracts underlying the Gulf Pacific proposal were still in effect. However, unlike Gulf Pacific, this is not a competitive proceeding and it does not appear that the rights of any party would be infringed upon by issuance of a certificate herein subject to a showing that the gas supply is still in existence. We are requiring, therefore, that Florida Gas certify to the Commission at the time it accepts the certificate that the MMBtu contract is still in effect.

*The Commission further finds:*

(1) Florida Gas, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities of Florida Gas hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas proposed are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant, Florida Gas, will be able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales proposed by Pan Am and Austral to FPL are at a price which will not threaten the price line in Southern Louisiana when the takes of gas as between the on-shore and off-shore areas are conditioned as provided below.

(5) The construction and operation of the proposed facilities and the transportation and sales of natural gas by Florida Gas are required by the public convenience and necessity, upon the specific conditions herein set forth, and a certificate therefor should be issued as hereinafter ordered and conditioned.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Florida Gas Transmission Company in Docket No. CP65–393, authorizing the construction and operation of the facilities and the transportation of natural gas in the total amount of 100,000 MMBtu until December 31, 1967, and 200,000 MMBtu thereafter for delivery to Florida Power & Light Company as described above and as more fully described in the applications in this proceeding as amended as required herein, upon the terms and conditions of this order.

(B) The certificate issued in (A) above is subject to the following terms and conditions:

(1) Pan American Petroleum Company and Austral Oil Company shall file statements that the gas sold by them to FPL under the MMBtu purchase contract of March 12, 1965, shall be produced entirely within the Southern Louisiana area, Mississippi and other down-stream States; that, measured over each five-year period, from the date deliveries commence the proportions of gas produced in the off-shore fields of Southern Louisiana shall not exceed 85 percent of the total amount of gas produced in the Southern Louisiana area; and that they will file annual reports setting forth compliance with these undertakings.

The annual reports shall show any annual deviations from the 85–15 percent ratio and the net balance to be achieved as of the end of the then current five-year period. The continued validity of the certificate issued in paragraph (A) above shall be dependent upon the compliance by Pan Am and Austral with their undertakings required in this paragraph (B) (1).

(2) The initial rate to be charged by Florida Gas Transmission Company for the transportation of gas to Florida Power & Light Company shall be 16 cents per MMBtu subject to further proceedings as will be provided upon further order of the Commission. Florida Gas shall file its proposed Rate Schedule T–3 (its transportation contract of March 12, 1965, with Florida Power & Light Company) amended to delete the five-year moratorium provision in Article VII(b).

(3) Florida Gas Transmission Company shall file changed rates as follows: under Rate Schedule G 54.7 cents per MMBtu; under Rate Schedule T–1 16 cents per MMBtu; and under Rate Schedule T–2 20 cents per MMBtu. These rates and the present I Rate Schedule shall be subject to further proceedings as will be provided upon further order of the Commission.

(4) The certificate herein issued to Florida Gas Transmission Company shall be accepted in writing and under oath within 30 days of the date of issuance of this order. At the time of acceptance Florida Gas shall certify that the MMBtu purchase contract of March 12, 1965, is still effective. The general terms and conditions set forth in paragraphs (a), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of such certificate and to the exercise of the rights granted thereunder.

(5) The facilities authorized herein shall be constructed and placed in operation within one year from the date of issuance of this order.

**(6) Unless otherwise specified, the filings required in subparagraphs (1)–(7) of this paragraph shall be made within 30 days of issuance of this order.**

**(7) Florida Gas shall furnish to the Commission annually until otherwise ordered by the Commission the following information:**

**(i) Total deliveries made by Pan American Petroleum Company and Austral Oil Company to Florida Power & Light Company under the corporate warranty by field and reservoir, showing gas volumes taken from each.**

**(ii) Names of fields and reservoirs for those proven gas supply sources from which deliveries are currently being made.**

**(C) Except as granted herein exceptions to the Examiner's decision are denied.**

**Commissioner Ross *dissenting*, *joined* by Chairman White, except as noted with respect to the treatment of Florida Gas' rates.**

**Ross, *Commissioner dissenting:***

**The arrangements between Pan American and Austral, Florida Gas, and Florida Power & Light constitute a jurisdictional sale by the producers, as both the Examiner and Staff concluded. I dissent to the majority's finding that no jurisdictional sale is involved. I further dissent to the majority's failure to condition the producers' price to that which is required by the public interest. Respecting both these issues, the majority's decision is legally erroneous. Finally, I dissent to the majority's failure to consider pipeline rates other than those proposed by the applicant.**

**In presenting this matter, the parties have firmly adhered to their atypical transactions which clearly raised an issue as to the authority of this Commission over the producer sale involved herein. This was their right. At the same time, it is only fair to indicate that it was the jurisdictional issue the parties insisted on trying which caused the complexity. Were it not for this issue, this application would have been granted several months ago.**

### *The Jurisdictional Issue*

**There are two agreements which embody the proposed transaction, designated as the Purchase Agreement and the Transportation Agreement. Florida Gas, Florida Power & Light and Pan Am all are parties to the Purchase Agreement. Florida Gas and Florida Power & Light are signatories to the Transportation Agreement; however, these parties obligate themselves to Pan Am in the Purchase Agree-**

ment to performing the Transportation Agreement. Moreover, Florida Power & Light asserts the right in the Transportation Agreement to change the contract demand volumes of Pan Am for reasons other than as provided in the Purchase Agreement.[1] Despite the obvious attempt to isolate Pan Am by drafting two agreements, involving the same parties, the two documents, considered together, obviously do not achieve this result. In fact, it is impossible under the two agreements construed together to distinguish Pan Am's gas from Florida Gas' other jurisdictional purchases. Indeed, a review of the transactions before us and the applicable legal principles makes it perfectly clear that the sale of gas by Pan Am[2] is for resale in interstate commerce. No amount of contractual gymnastics can shroud this reality.

The essential features of the agreements are as follows: Pan Am has contracted to sell 200,000 MMBtu per day at its existing East White Lake Field delivery point on a 100 percent load factor basis. Stated in conventional terms, Pan Am will be selling 191,205 Mcf of 1046 Btu gas per day. Florida Gas takes delivery of this gas, which is taken in a commingled stream with other gas Florida Gas purchases from Pan Am. For accounting purposes, the first 191,205 Mcfd (200,000 MMBtu) delivered at the tailgate of Pan Am's processing plant in the commingled stream will be considered "transportation" gas under the instant agreements and the balance will be considered "jurisdictional" gas which the applicant purchases from Pan Am.

The commingled stream from this source is further commingled with other supply sources of Florida Gas,[3] and the total volumes are transported to Florida. Most of the gas stream is then put through an extraction plant owned and operated by Florida Hydrocarbons Co. where the Btu content is reduced to 1036. After extraction, the gas, at least some of which is enriched to 1040 Btu, is then delivered by Florida Gas to its customers, including Florida Power & Light.

As a result of the extraction, the 191,205 Mcfd of 1046 Btu gas initially delivered by Pan Am, which completely satisfies Pan Am's contractual obligations under these agreements, is reduced to the equivalent of 190,108 Mcfd 1040 Btu gas. However, Florida Power & Light has bargained for 200,000 MMBtu, which means that Florida Gas must purchase and transport the equivalent of an additional volume of 1,097 Mcf per day or 290,405 Mcf annually of 1046 Btu gas to make up for the shrinkage.[4]

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[1] Article V, Section 5, subsections (b) and (c).

[2] The reference to Pan Am is intended to include Austral throughout this statement.

[3] Page 36 of the Transportation Agreement provides: "It is recognized by the parties hereto that the gas delivered to Pipeline for transportation hereunder will be commingled in Pipeline's transmission system with other gas received directly or indirectly from other producers, and that the specific gas of Power Company delivered to Pipeline by Pan Am pursuant hereto cannot be redelivered to Power Company."

The agreement between Florida Gas and Florida Hydrocarbons is a purchase and sale contract executed on August 29, 1960, *i.e.*, after the initial certification in which:

> *Seller* (Florida Gas) warrants that it has lawful possession of the gas delivered to Buyer hereunder lawful right to deliver such gas hereunder for processing and lawful right to sell, and *title* to the hydrocarbons extracted from such gas and purchased hereunder. (Emphasis added)

Section 4 of Article VI of the Transportation Agreement reads as follows:

> 4. *Service Under Other Rate Schedules or Contracts.* It is contemplated that Power Company (Florida Power & Light) may purchase gas from Pipeline (Florida Gas) if available, on an interruptible basis at the same Delivery Points specified herein *for the firm transportation service provided by this Agreement.* (Emphasis added)

In other words, Florida Power & Light has the option of designating gas it receives from Florida Gas under the instant agreements, as gas *purchased* from Florida Gas, rather than "transportation" gas.

Under the Purchase Agreement, Florida Power & Light is obligated to pay Pan Am for 200,000 MMBtu each day during each year of the 20-year contract (100,000 MMBtu per day during the first year the contract is effective). If Florida Power & Light does not take this contract demand during any year, it may take such volumes paid for but not taken during the succeeding 12 months. However, since Pan Am's obligation is limited to delivering no more than 100 percent of the contract demand for any year, the only way Florida Power & Light can make up volumes paid for but not taken is to take jurisdictional gas from Florida Gas. This is precisely what Article V, Section 6 of the Transportation Agreement provides. At any time make-up volumes exist, that section provides that Florida Gas has a duty to tender and Florida Power & Light has the right to receive "*interruptible sales of gas as contemplated by Section 4 of Article VI hereof,*" "up to the amount of any Make-up Volumes not theretofore made up pursuant to the terms of this Section 6, in lieu of any volumes of interruptible sales so tendered, without paying any additional transportation rate or charge therefor." (Emphasis added) To restate it simply, Florida Power & Light now buys gas on an interruptible basis from Florida Gas. Whenever Florida Power & Light gets behind on its takes under this agreement, it simply designates part or all of its interruptible purchases as Make-up Volumes.

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[4] This figure would be increased to the extent Florida Gas does not enrich the Btu content of the extracted gas from 1036 to 1040 Btu.

It is totally unnecessary to examine the holdings in *Lo-Vaca*,[5] *Transco*,[6] and similar cases, to know that Pan Am will be making a jurisdictional sale. For this case does not present the as yet unresolved "X-20" situation. To the contrary, the express terms of the instant agreements, unlike the agreements before the Commission in 1956, specifically provide for jurisdictional producer sales.

Under these agreements, this is precisely what Section 4 of Article VI provides; namely, that Florida Power & Light may *purchase gas from Florida Gas* in lieu of the firm transportation service also provided for in the agreement. Such a purchase means that Florida Gas would deliver to Florida Power & Light gas to which it, Florida Gas, has title. The next question is what is the source of this gas. Obviously, this has to be jurisdictional gas which Florida Gas has purchased for resale in interstate commerce. So what do we have: a sale of gas to Florida Gas, who resells it to Florida Power & Light in interstate commerce—under these agreements. Accordingly, it is clear that the present arrangements contemplate a jurisdictional producer sale.

In addition, Florida Gas warrants title to the hydrocarbons it sells to Florida Hydrocarbons, which includes the hydrocarbons in the gas Pan Am is purporting to sell to Florida Power & Light herein. Obviously, Florida Gas cannot warrant title unless it has title, and it surely cannot have title to the hydrocarbons in the gas if it has no title to any part of the gas itself. The obvious intent of these agreements is that title to at least part of the gas passes to Florida Gas. Thus, Pan Am's delivery to Florida Gas involves a transfer of title, and hence, a jurisdictional sale.

Moreover, Florida Gas must deliver to Florida Power & Light volumes in addition to those Pan Am "sells" to Florida Power & Light. This is necessary to compensate for the shrinkage due to extraction. This gas is owned by Florida Gas by virtue of a jurisdictional purchase. Therefore, for the reasons stated in the discussion of Article VI, Section 4, the present agreements contemplate a jurisdictional producer sale.

As our analysis indicates, the simple fact of extraction does not transform a nonjurisdictional transaction into a jurisdictional one. However, when the parties provide for the delivery of jurisdictional gas within their agreement in order to compensate for the shrinkage due to extraction, they have gone far beyond a simple case of extraction.

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[5] *California v. Lo-Vaca Gathering Co.*, 379 U.S. 366.

[6] *Public Service Electric & Gas Co. v. F.P.C.*, 371 F. 2d 1 (CA3–1967).

Finally, the present transactions are inextricably intertwined and necessarily dependent upon Florida Gas' jurisdictional service. Florida Gas is obligated to deliver system gas to Florida Power & Light on a regular basis for make-up purposes. Florida Gas is obligated to deliver additional volumes of system gas to Florida Power & Light to compensate for shrinkage due to extraction. Additionally, the Florida Gas system is obligated to deliver gas to Florida Power & Light on a 100 percent load factor basis irrespective of lesser deliveries by Pan Am. In these ways, the service proposed in this case is necessarily related to and indistinguishable from Florida Gas' jurisdictional service.

The majority's only explanation of the foregoing features of the present arrangements is that the material features of these agreements are similar or identical to the 1956 contractual agreements and that only "technical" differences exist. On the basis of this presumed similarity, the majority concludes that the instant transactions as they relate to Florida Gas, Florida Power & Light and the producers, must be held to be nonjurisdictional. But the given premise does not necessarily lead to the majority's conclusion—even assuming that the present arrangement is identical with the earlier one, which it is not. For example, unlike the present arrangements, the original contracts did not warrant that Florida Gas had title to any portion of the so-called "transportation" gas; did not provide for a sale of gas by Florida Gas to Florida Hydrocarbons for extraction; nor for the designation of interruptible gas as "make-up" volumes. These are material and decisive differences.

Even if the two transactions were substantially similar in all material respects, as the majority suggests, the Commission's decision in the 1956 proceeding does not require a finding that the arrangements now before us are nonjurisdictional. A review of that proceeding indicates that although the Commission's jurisdiction over the producer sales was not discussed in the original opinion, the issue was squarely presented on rehearing. Declining to pass on whether it had such jurisdiction, the Commission said:

> * * * As to such claimed jurisdictional questions as whether the producers selling to the power companies engage in jurisdictional services which must be certificated, *the record is insufficient to permit such determinations* * * * (17 FPC 303, 310)

In the subsequent court test of this opinion, the Commission's position was upheld. With respect to this particular point the Court said:

> * * * *The Commission therefore thought the present facts did not warrant deciding whether it had jurisdiction over the power company or its suppliers, and we are not inclined to disagree.*[7]

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[7] *Florida Economic Advisory Council v. F.P.C.*, 251 F. 2d 643, 646–647; cert. denied, 356 U.S. 959.

Quite aside from the unique factors in the present agreements which distinguish it from the earlier proceeding, Pan Am's sale is jurisdictional. In *Lo-Vaca*, the Commission found, and the Supreme Court agreed, that producers could not exempt a sale to a pipeline from regulation by attempting to designate the sale as limited for use by the pipeline buyer, and hence not for resale. It was recognized that at least some of the volumes were, in fact, sold for resale in interstate commerce. The Commission stated: "* * * the touchstone to the question whether a sale of gas is for resale in interstate commerce is what is done with the gas, not what the parties may say about the transaction, verbally or in writing."

The Supreme Court affirmed in clear, unambiguous language. Citing prior decisions, the Court broadly held:

> The result of our decisions is to make the sale of gas, which crosses a state line at any stage of its movement from well-head to ultimate consumption, in interstate commerce within the meaning of the Act.

The factual situation here is substantially the same as in *Lo-Vaca*. There, as here, the producer attempted to immunize the sale of gas from federal regulation. There, as here, the device used in an attempt to accomplish that result was to insert language in the contract stating that the gas sold under the agreement would be consumed by the purchaser, and hence not resold in interstate commerce. In *Lo-Vaca*, the designated consumptive use was compressor fuel; here, it is boiler fuel. There, as here, the gas sold flowed in the commingled system of an interstate pipeline where, as a matter of uncontested fact, some of the gas was resold in interstate commerce.

Similarly, in *Amerada*,[8] the Supreme Court affirmed the Commission's holding that the sale of gas by a producer for resale within the state was a jurisdictional sale when the gas was commingled in a pipeline with other gas sold outside the state.

The *Rayne Field* series of cases represented another possible device for selling huge loads of gas for interstate consumption without price regulation.[9] Again, the Commission found that the transaction came within the meaning of the Act. The effect of these cases was to eliminate any regulatory gap in producer regulation. The Commission and the courts made it clear that any delivery of gas to an interstate pipeline for use in its system would involve a jurisdictional sale and that the substance of the transaction, rather than the parties' description of it would be controlling.

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[8] *F.P.C. v. Amerada Petroleum Corp.*, 379 U.S. 687.

[9] *U.G.I. v. Continental Oil Co.*, 381 U.S. 392; *F.P.C. v. Pan American Petroleum Corp.*, 381 U.S. 762; *Atlantic Refining Co. v. F.P.C.*, 370 F. 2d 57. The majority overlooks this series of cases in stating that the Commission has required parties to recast purported nonjurisdictional contracts in a jurisdictional form. Also in *El Paso Natural Gas Co.*, 22 FPC 900, the Commission required the parties to recast a nonjurisdictional direct industrial sale to a jurisdictional sale for resale. (see p. 457, *infra*.)

*Transco-Texaco* is an exception to the broad holding in *Lo-Vaca.* As the opinion of both the Commission and the reviewing court reveal, it is a very narrow exception and not at all applicable to the facts of this case. Most importantly, Texaco was the owner of the gas before and after the transportation. It was a simple matter of Texaco wanting to use its Louisiana gas in New Jersey, unlike the atypical provisions of these agreements. In the absence of any sale by Texaco and in the absence of the delivery of gas to the consuming public resulting from that transaction, the Commission recognized that its action could not adversely affect the public interest. The Commission repeatedly emphasized that this feature of the case was essential. So did the reviewing court.

The court concluded with a most significant finding: "We are of the opinion that under these circumstances the doctrine of commingling, as applied in *Lo-Vaca* and *Amerada*, has no application in the instant case because of the absence of a jurisdictional *sale for either consumption* or resale." [Emphasis added.] The court is saying that wherever a producer makes a sale for any purpose—for use within the state of origin, or for consumption—and the gas is commingled in an interstate pipeline, there is a jurisdictional sale. With this holding, I fully agree.

When *Transco* was before the Commission, I then believed and I now believe that the decision we reached was a narrow, sensible limitation of *Lo-Vaca.* There were concrete benefits to consuming public presented in *Transco.* It is ironic that antitheses of the benefits are presented in this case. *Transco* foreclosed triggering of producer rates. Here, the majority sanctions rates which will exceed the level required by the public interest (see p. 460, *infra.*). The transportation service in *Transco* benefited its jurisdictional customers. In this case, the purported transportation service is subsidized by the pipeline's jurisdictional customers (see pp. 463–465, *infra.*). In view of the majority's holding today, I am now far from certain that reasonable exceptions can long remain exceptions.

The majority claims that the *Transco* result governs because the commingling here is indistinguishable from that in *Transco.* This analysis hardly answers the question. If commingling is to be the sole test, the general rule established in *Lo-Vaca* would govern and not the exception permitted in *Transco.* Moreover, in choosing to follow *Transco*, the majority gives no weight to what the Commission emphasized over and over again; namely, that Texaco made no sale, either for consumption or otherwise. The court's emphasis of the same essential feature is likewise lost to the majority. In remarking that this case is farther removed from the ambit of *Lo-Vaca* and *Amerada* than *Transco*, the majority ignores that this Commission, on its own motion, included the jurisdiction issue in this case at the same time as it decided *Transco.* Obviously the Commission did not believe a year ago that the jurisdictional question was as simple as the majority would now have us believe.

The majority's holding appears to be influenced by its belief that the Commission would be giving up jurisdiction over the transportation of the gas to the detriment of jurisdictional customers if it declared the producer sale to be jurisdictional. This, the majority suggests, would be writing a priority into the Natural Gas Act which is not evident on its face. The fact is that the Commission can—and does—protect jurisdictional customers from subsidizing nonjurisdictional pipeline sales in two ways. First, the Commission must issue a certificate for the transportation of *all* gas moving in interstate commerce irrespective of whether some or all of the gas will be sold under rates not regulated by the Commission. In so doing, the Commission assures itself that the sale is required by the public convenience and necessity, and that it will be economic. The Commission can also impose any conditions as may be necessary to protect jurisdictional customers.[10]

In addition, the Commission exercises considerable control over nonjurisdictional sales in pipeline rate cases. In such proceedings, total pipeline costs are reviewed, including those attributable to nonjurisdictional pipeline sales. The next step is to allocate these total costs in two categories: (1) those relating to jurisdictional sales; and (2) those relating to nonjurisdictional sales. In making this allocation, the Commission is careful that all the costs attributable to nonjurisdictional sales are assigned to that class so that jurisdictional customers pay no more than their fair share.

It is therefore clear that we can adequately protect jurisdictional customers without direct regulation over transportation rates and that no sufficient reason exists for waiving our jurisdiction over producer sales on this account. This holding is consistent with the statutory scheme of the Natural Gas Act and, contrary to the majority's belief, suggests no priority between its "transportation" provisions and its "sale for resale" provisions.

There is much irony in the majority's emphasis of having jurisdiction over the transportation rate. Despite its proclamations on this issue, the majority utterly fails to exercise this important jurisdiction in this case, even though the rate is unjust and unduly discriminatory (see pp. 462–465, *infra.*).

Finally, on the jurisdictional holding, the majority asserts: "An important consideration in our decision here flows from the nature of Florida gas operations which we believe is dictated largely by the unique conditions which prevail in the Florida fuel market." In saying this, the majority refers to the following factors: Florida's subtropical climate; Florida Gas' load factor; Florida is a fuel deficiency area; "plus the ease of transporting natural gas."

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[10] For example, the Commission customarily imposes the following condition in certificating the transportation of gas for a firm direct industrial sale "This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements."

Precisely how those assorted factors bear on the question whether Pan Am is making a sale of gas for resale in interstate commerce is a puzzle to me since they are not further explained. But, in any event, the factors described are far from unique. In fact, the Commission was faced with virtually an identical situation only a few months ago in the *Gulf Pacific* case.[11] California, like Florida, enjoys a mild climate. The pipelines serving California also operate at high load factors and the nature of the principal purchasers are the same as in Florida. And, as far as I know, the ease of transporting gas to California is analagous to that applicable to Florida.

There is a further analogy to the California market. In Docket No. G-12580, El Paso proposed to make a direct sale to Southern California Edison Co. for boiler fuel. The Commission, in an opinion issued November 27, 1959, denied that aspect of the proposal and amended the certificate by requiring El Paso to make a jurisdictional sale. The Commission stated:

> In view of the constantly increasing demand for more gas for all kinds of customers in California it would not be in the public interest to commit a large portion of El Paso's sales capacity to one customer for one type of use. To do so would only create more difficulties for El Paso in obtaining sufficient gas to meet new demands and would be bound to result in even greater upward pressures on the price of gas in the producing area. As we pointed out in our Opinion 315-A (Transcontinental Gas Pipe Line Corporation, *et al.*, *supra*) the attempts by large industrial customers to reserve large blocks of gas for themselves has already affected natural gas prices. As we were convinced in that case, we are equally convinced here that considerations of public convenience and necessity require that we refuse to authorize such sales. (22 FPC 900, 903)

The same reasoning is applicable here. Indeed, by authorizing the instant proposal, the majority approves the underlying contracts which commit not only 200,000 MMBtu of Florida Gas' cheap expansibility to Florida Power & Light, but also an additional 150,000 Mcf (not MMBtu) per day, which is the large majority of Florida Gas' remaining cheap expansibility.[12]

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[11] *Transwestern Pipeline Co.*, Docket No. CP63-204; Opinion No. 500, issued July 26, 1966, 36 FPC 176.

[12] Article V. Sections 3(a) and 3(b) of the Transportation Agreement.

### *Conditions Relative to the Producers' Price*

The most serious deficiency in the majority's decision is its treatment of the price at which the producers are permitted to sell gas in interstate commerce. The majority discusses at some length its authority to impose conditions in pipeline certificates which may be necessary to protect the consuming public but does not mention one court decision on this much litigated subject. It then concludes, however, that the only condition necessary is one requiring the producers to adjust their on-shore and off-shore takes of gas so that at least 85 percent of the gas comes from off-shore sources. Although the majority's reasons for imposing this condition are obscure, it appears that its direct result is to condition the contract price to something slightly in excess of the in-line prices for Southern Louisiana. This halfway measure is not the kind of protection from excessive prices to which the public by law is entitled, particularly since the in-line price in Southern Louisiana is declining.[13]

Justice Clark's opinion for the majority in *CATCO* began with the proposition that "The purpose of the Natural Gas Act was to underwrite *just and reasonable* rates to the consumers of natural gas (360 U.S. 378, 388). [Emphasis added.] He continued: "The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." He then describes specifically how these objectives are provided for in the Act: "The heart of the Act is found in those provisions requiring initially that any 'proposed service, sale, operation, content, extension, or acquisition * * * will be required by the present or future public convenience and necessity * * * *and* that all rates and charges 'made demanded or received' shall be 'just and reasonable.' " [Emphasis added.] Because of the interminable delays incident to fixing just and reasonable rates, the Court went on to require the Commission to hold the line respecting the price at which sales were commenced. This was done so that "the consuming public may be protected while the justness and reasonableness of the price fixed by the parties is being determined under other sections of the Act." (360 U.S. 392) To emphasize the point, Justice Clark added: "Section 7 procedures in such situations thus *act to hold the line awaiting adjudication of a just and reasonable rate.*" (360 U.S. 392) [Emphasis added.]

The majority's condition does not assure that the public will pay no more than a just and reasonable rate. Indeed, the majority disclaims the need for producer regulation alleging that price competition from other fuels will adequately protect the public. This, of course, is not true. Only recently, the Court of Appeals for the District of Columbia Circuit stated: "The need for the FPC, and for a concept like in-line prices, arises primarily because the unregulated market place cannot protect the consumers adequately. Congress created the FPC to protect the consumer from the market place, not simply to reflect it."[14] Similarly, in the opinion on review of the Commission's *Permian* decision, the Court declared:

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[13] **The Commission observed in *Union Texas,* 32 FPC 254, 262: "We note the marked decline in permanently certificated prices in this area in the last two periods subsequent to the issuance of the guideline prices."**

> It [the Commission] concluded that the record fails to establish that a just and reasonable rate can be established through competition and that "the primary competition revealed by the record was among the pipelines to secure new gas supplies at higher prices." * * * We accept the conclusion of the Commission that competition has not been effective to fix a just and reasonable rate.[15]

The omission of a condition down to just and reasonable rate is certain to lead to one of two possible results. The majority has either differentiated between appropriate price levels for sales based upon the length of time between contractual escalations, or it has established a distinction between jurisdictional and nonjurisdictional sales by producers which will make the regulatory gap a much more attractive one.

Either alternative is dangerous. As to the first, area pricing can only work if there are a limited number of fixed pricing differentials, and the new gas-old gas distinction and quality discounts about approach this feasible limit. It is too easy to package sales contracts with "bonus" conditions—some legitimate, some not, if once they are permitted to justify exceptions to the general rule. At a minimum, exceptions should not be permitted on a case-by-case basis, where today's exception inevitably tends to be tomorrow's rule, but only as part of the area rate procedure itself, where the rationale for any exceptions would be clearly stated. Only recently, the Commission recognized these very points by announcing that it would no longer grant final certificates for South Louisiana sales at prices above the in-line level because of "premium" conditions.[16] The majority's decision today appears to be reversing that sound determination. It is apparent that whatever other reasons may exist for distinguishing between jurisdictional and nonjurisdictional transactions, "premium features" cannot be one of them.

Regarding the second alternative, any distinction between prices allowed for jurisdictional sales and those permitted in certificating nonjurisdictional sales will inevitably tend to induce producers to sell at a fixed price not subject to subsequent lowering. Large industrial users and distributors will also have valid reasons of their own to seek long-term commitments of gas, even at the expense of foregoing possible subsequent price reductions. This was precisely the situation in the *Transco X-20* case.[17]

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[14] *P.S.C. of N. Y.* v. *F.P.C.*, 373 F. 2d 816 (CADC–1967).

[15] *Skelly Oil Co.* v. *F.P.C.*, *et al.*, 375 F. 2d 6 (CA10–1967).

[16] Order No. 336, Docket No. R–316, issued February 9, 1967, 37 FPC 295.

The only proper condition would be one conditioning the price to the in-line level until the just and reasonable rate is decided and to the just and reasonable rate thereafter. However, the condition imposed by the majority fails in two important respects even to assure that the price of gas will conform to the in-line level. First, under the sales contract the price escalates to 21.2¢ per MMBtu for 10 of the 20 years the agreement will be in effect. The majority's condition does not affect this escalation. While this may appear a small matter, especially when indicated in terms of dollars per Mcf, it is well to remember the magnitude of the majority's decision. Thus, the failure to condition the 10-year escalation is worth $23,360,000 in excess charges to the producers based on the present in-line level.[18] Secondly, on February 9, 1967, the Commission issued a Statement of General Policy stating its intention to include a refund condition down to 16.5¢ per Mcf (18¢ per Mcf onshore) in certificates authorizing sales from South Louisiana. This action was taken, a unanimous Commission stated, "for the purpose of protecting consumers from 'out of line rates.'" No such refund condition is provided by the majority. The failure to include a 2¢ refund condition eliminates $51,830,000 of protection to the consumers from possible excess charges over the life of the agreement. This is the type of regulatory gap the Commission was concerned with in *Lo-Vaca*, *Amerada*, *Transco*, and *Sayre Field*.

While generally disclaiming the public's need for protection in the area of producer prices, the majority does make one attempt to show its result is reasonable by comparing it to a jurisdictional sale. This attempt consists of comparing the Commission's policy of permitting the filing of contracts containing 1¢ per Mcf escalations every 5 years with the single 10-year escalation in the present sales contract. This analysis is faulty for two obvious reasons. First, the majority believes that the in-line price escalates 1¢ every 5 years. While the producers undoubtedly would support such a policy, the Commission has not yet seen fit to do so.[19] The second error is found in this statement by the majority: "Assuming, as we have, that we would not initially suspend escalations of this magnitude if this were jurisdictional * * * " This is an obvious yet critical error. The Commission's suspension policy has nothing at all to do with the "magnitude" of any rate increase. To the contrary, the Commission suspends producer rate increases when they exceed the applicable area ceiling. Since Pan American's rate is already at the ceiling, any rate increase would be suspended were the sale held to be jurisdictional.

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[17] *F.P.C. v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1961).

[18] Compare this action with the majority's statement that it would be completely improper to speculate as to the course of presently pending proceedings. In its balancing process, isn't the majority speculating that the just and reasonable rate to be established by Southern Louisiana will not be lower than the present in-line level?

[19] As the Court observed in the recent *P.S.C. of N.Y.* case: "It is true that our decision may cause the in-line price to be frozen temporarily during the interim period between sales of gas and the rate determination under Section 4 or Section 5 of the Act. This kind of freeze seems to be required by the logic of *CATCO* and in-line pricing."

The Commission's authority to insert appropriate conditions in pipeline certificates is clear and it undoubtedly has the authority to impose in pipeline certificates conditions which would permit nonjurisdictional producer prices to in-line standards. Therefore, to the extent that the condition which the majority here imposes limits the price which may be charged to approximately the in-line price we believe is a step in the right direction. In-line pricing is intended to be a merely interim pricing technique until just and reasonable rates are set in the respective producing areas. *CATCO* did not contemplate that in-line pricing would have any validity after just and reasonable prices were set and I believe that to so perpetuate them is contrary to the Commission's past treatment and is illegal.

In short, we are unable to see that the majority has put forth any rational basis for the condition it imposes in the pipeline certificate and, in any event, such a condition would be unreasonable and, therefore, illegal.

Ultimately, the majority in effect concedes that the condition it imposes provides less protection to consumers than would be provided by a jurisdictional sale. The majority contends that it balanced this disadvantage with the advantage of certainty of price and supply which the utility and its customers have contractually achieved. It is not surprising that this notion of certainty was not even mentioned by Florida Power & Light, the purchasing utility. The simple explanation is that greater certainty could have been achieved by a direct nonjurisdictional sale by Florida Gas to Florida Power & Light. Under such an arrangement, Florida Power & Light would have had a certain price, not only for its gas, but for its transportation as well which represents approximately one-half of the delivered price. In contrast, under the instant proposal, only the gas cost is certain. The transportation rate is, as the majority emphasizes throughout its opinion, a jurisdictional rate subject to regulation and change by this Commission.

With respect to certainty of supply, the majority assumes that producers, but not pipelines are able to make long term nonjurisdictional industrial sales on a firm basis. In fact, the contrary is true. The majority of the firm nonjurisdictional direct industrial sales made by United Gas and Southern Natural, pipelines serving the same general area, are 20-year contracts. Of course, the most conclusive on this point is the experience of Florida Gas itself. We find that virtually all of Florida Gas' firm nonjurisdictional direct industrial sales are long term 20-year contracts.

It is disheartening to realize that the certainty for the purchaser which tips the scales for the majority is illusory. The only certainty in the majority decision benefits the producers by recognizing their firm contract price. But nothing in the Natural Gas Act indicates that producers are entitled to greater price certainty than are consumers.

### *Florida Gas Rates*

The basic purpose of the Natural Gas Act is to assure that consumers receive adequate natural gas service at the lowest reasonable rates. As stated in the previous action, this purpose is given life not only in Sections 4 and 5, but in Section 7 as well. Just because this case arose under Section 7 does not mean that we should put blinders on and ignore appropriate rate adjustments that can, and should be made on the basis of the existing record. These sections were designed to work together, not independently, in protecting the public. Thus, in the *Hope* case,[20] the Supreme Court cited the certificate provisions of the Act among those "plainly designed to protect consumer interests against exploitation at the hands of natural gas companies."

The legislative history of Section 7(e) demonstrates that Congress wanted this Commission to consider rate questions in certificate proceedings. That was one of the purposes for adding subsection (e) to Section 7 of the Act in 1942. In reporting the bill favorably, containing the amendments, the House Committee on Interstate and Foreign Commerce said (H. Rep. No. 1290, 77th Cong. 1st Sess., p. 203):

> By the unregulated construction of a pipe line, uneconomic construction, or inflated costs may make proper regulation of operation thereafter difficult or practically impossible. The bill when enacted will have the effect of giving the Commission an opportunity to scrutinize the financial set-up, the adequacy of gas reserves, the feasibility and adequacy of the proposed service, *and the characteristics of the rate structure in connection with the proposed construction or extension at a time when such vital matters can readily be modified as the public interest may demand.* [Emphasis added]

In the recent *Gulf Pacific* case, the Commission required rate adjustments in addition to those offered by the applicants. The required adjustments applied to all the services performed by the applicants, not merely to those involved in the case. There are several other examples. One such example is the *Panhandle* case, where a unanimous Commission stated:

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[20] *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591, 611–612 (1944).

> The examiner thought that these questions could and should be left to a subsequent Panhandle rate case. We disagree. As indicated in Northern where the immediate effect of Commission action certificating a new sale may be to harm existing jurisdictional customers our responsibilities under the public convenience and necessity standard of Section 7 justify prompt remedial action.[21]

We have such immediate effects present here. The principal effects are threefold. As explained above, Florida Gas must purchase and transport substantial volumes of gas to compensate for the shrinkage of the gas "purchased" by Florida Power & Light. The cost of this gas and its transportation will be born by jurisdictional customers. Moreover, it will decrease the interruptible service available to jurisdictional resale customers such as Gainesville Gas Company, a party hereto, which service presently is allegedly inferior and unsatisfactory.

The present proposals will decrease the volumes of interruptible service available to jurisdictional resale customers in another way. Under the agreements, Florida Power & Light can designate interruptible gas it buys from Florida Gas, as "transportation" gas to which it is entitled under these agreements.[22] Thus, on a day when Florida Gas would have 50,000 Mcf of gas for distribution to both its direct and resale customers on an equitable basis, Florida Power & Light can preempt the entire amount for itself under Article VI, Section 4 of the Transportation Agreement. The record does not describe the extent to which Florida Power & Light would exercise this option; but the immediate effect of certificating the present proposal obviously "may be to harm existing jurisdictional customers."

In its certificate application, Florida Gas embedded a rate design covering all its rates. This rate design is discriminatory in that different customers pay different rates for the same unit of service. To the extent practicable, this discrimination should be eliminated now. Fortunately, all the evidence necessary to make a judgment is before us and is not controverted. Only the allocation methodology is argued.

The unit cost to Florida Gas for transporting gas under all its rate schedules is substantially the same.[23] However, because the distance the gas is transported under certain rate schedules varies markedly from the distance gas is transported under others, there is a substantial difference in the total cost attributable to each class of service. This is shown in the following table:

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[21] 30 FPC 1260, 1266.

[22] See pp. 451–452, *supra*.

[23] The difference between the G & I cost and the other costs is due to load factor. At a 100 percent load factor, the cost would be a comparative 1.75¢. The remaining minor variations are a result of a volumetric allocation of administrative and general costs; these costs not being affected by the distance of haul.

| | Unit cost per MMBtu mile | Weighted average miles of haul | Delivered cost per MMBtu |
|---|---|---|---|
| | *Cents* | | *Cents* |
| T-1 | 1.780 | 785.4 | 14.0 |
| T-2 | 1.736 | 1,366.7 | 23.7 |
| T-3 | 1.759 | 988.2 | 17.35 |
| G & I | 2.342 | 987.5 | *52.7 |
| I | ---------- | ---------- | 33.0 |

*Includes purchased gas cost and retains same level of I service.

Under this rate design, each class of service bears its proportionate cost, and discrimination among customers is eliminated. I am impressed with the fact that elimination of the discrimination, as Staff has recommended, represents a savings to jurisdictional customers over $369,500 each and every year the rate case grinds slowly to ultimate decision.

Certainly Florida Gas' argument for using incremental costs is inappropriate in light of its history of using more expensive expansibility in certificate proposals for its jurisdictional customers and cheaper expansibility for industrial customers.

How does the majority view its rate responsibilities under Section 7? There is a grand total of two sentences the majority employs to justify its non-action, and they are repeated in full:

> We could under the Act hold a rate proceeding with every certificate proceeding except that the time consumed could be intolerable. For this reason we said in our order of January 17, 1966, that "It is incumbent upon the hearing examiner to entertain in this proceeding only such evidence as may be relevant to a certificate case."

Subsequently, the majority specifically finds that:

> (4) The construction and operation of the proposed facilities and the transportation and sales of natural gas by Florida Gas[24] are required by the public convenience and necessity, *upon the specific conditions herein set forth.* [Emphasis added]

Going to the ordering paragraphs, we find subparagraphs (2) and (3) of paragraph (B) which specifies the initial rate which Florida Gas shall charge for the service proposed in this case, and the rates which Florida Gas shall charge for its other jurisdictional transportation services and sales.

I would make three criticisms of the majority's treatment of this issue. First, despite the fact that the majority includes language saying it isn't considering the rate issue, the fact of the matter is that the majority makes a determination on this issue when it finds that the public convenience and necessity require the rates proposed by Florida Gas. What the majority is really saying is that it will consider rate designs suggested by the applicant, but not those supported by other parties.

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[24] The reference to "sales" by Florida Gas is only a Freudian slip.

Secondly, the rate design is unjustly discriminatory, as described above. The Commission reached the same conclusion in 1956. After considering this issue in the original certification proceeding, the Commission stated:

> Thus, although the evidence is not sufficient to enable a determination of precisely what the proper rate should be, it sufficiently supports the conclusion that Houston Gas' presently proposed rates are not designed to require each class of service to bear its proper share of costs. (16 FPC 134)

The Commission added:

> Houston Gas should be required to file new transportation rate schedules (T-1 and T-2) from which the cancellation provisions and reduction of take provision referred to have been eliminated. The rates contained in such rate schedules should be commensurate with the costs related to the service to be rendered and based upon the usual Commission cost-of-service allocation practices. (16 FPC 135-6)

These findings were given effect in paragraphs (C) (1) and (2) of the Commission's order in that proceeding.

While Florida Gas refiled its tariffs, it did not fully comply with the Commission's order. To permit service to commence, the tariffs were accepted for filing, but the issues of their propriety was specifically reserved.

Thirdly, all the cost evidence is in the record and is uncontested. Contrary to what the majority implies, it will not lengthen this certificate proceeding to squarely face the issue. All the majority need do is make a choice of allocation methodology, respecting which the method advocated by Staff has been adopted by Commissions down through the ages. Simply postponing the issue to some other proceeding only means the same evidence will have to be re-introduced, re-cross-examined, re-briefed, etc., until at long last, the same issues and the same evidence are again before us. I doubt if it will look much different the second time around.

It is well to remember that the applicant, Florida Gas, was the party which embedded the rate issue in its certificate application—not Sun or the Staff. Once the applicant tied its certificate application to a proposed rate design, it was incumbent upon the other parties to point out the defectiveness of Florida Gas' proposal.

In conclusion, I simply would like to emphasize the prospective dangers inherent in the majority's action. I know, and my colleagues know, that (despite cautionary language which may be employed) no case is so "unique" that it can be limited only to the facts of that particular case. An equitable exception today becomes tomorrow's rule. Thus, this dissent is designed to alert the public and prospective intervenors that some of the recent jurisdictional court victories may come unstuck. And I am doing it today, before our jurisdiction is whittled away to the point of no return. Resale customers should be on constant guard so they won't be the orphans of tomorrow.

Chairman White joins me in this statement except with respect to the discussion of the adjustments to Florida Gas' rates. In the context of this proceeding, and the pending rate case in Docket No. RP66–4, he does not believe the majority's handling of that issue is unreasonable.

## INITIAL DECISION

### OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER THE NATURAL GAS ACT

(Issued July 7, 1966)

KURTZ, *Presiding Examiner:* Florida Gas Transmission Company (Applicant), a Delaware corporation and a "natural-gas company" under the Natural Gas Act, seeks a certificate of public convenience and necessity pursuant to Section 7 of said Act authorizing the construction and operation of additional facilities to increase its over-all system capacity and the transportation of natural gas for Florida Power & Light Company, from Louisiana to certain of its electric generating stations in Florida. The issues raised by the parties in this proceeding involve conditions sought to be attached to the authorization requested.

The application was filed June 9, 1965, and thereafter various supplements were filed, the last a revised supplement on February 1, 1966. The hearing commenced on February 28, 1966, and after recess was concluded on April 22, 1966. Final briefs were filed on June 20, 1966. In addition to the briefs filed by Applicant and the Staff, briefs were filed by Intervenors: Florida State Board of Health; Department of Health, Education, and Welfare; Florida Power & Light Company, Sun Oil Company (Sun); and Pan American Petroleum Corporation (Pan American), which brief was concurred in by Austral Oil Company (Austral). Intervenors: Florida Power Corporation, Florida Public Service Commission and Gainesville Gas Company did not file briefs.

Applicant is a wholly-owned subsidiary of Florida Gas Company which also has other wholly-owned subsidiaries known as Florida Hydrocarbons Company, Florida Liquid Gas Company and Coastal Production Company. The parent company is also engaged in the distribution of natural gas in six areas of Florida with retail sales made to approximately 50,000 residential, commercial and industrial users, on both a firm and interruptible basis. It serves Daytona Beach, Jacksonville, Lakeland, Miami, Orlando and the Triangle Area (Eustis, Mt. Dora and Tavares). Florida Hydrocarbons Company owns and operates an extraction plant at Brooker, Florida, which removes propane, butane and natural gasoline from Applicant's gas stream and a blending facility which produces automotive gasoline. Sales of its products are made under long-term contracts. Florida Liquid Gas Company sells LP gas to approximately 7,000 customers in the distribution divisions of Florida Gas Company. Coastal Production Company purchases and sells natural gas within Texas and has taken an initial step in the exploration for gas and oil by participating in a joint venture with several other companies who are exploring in the offshore area of Southern Louisiana.

Applicant owns and operates a pipeline system extending from the Gulf Coast Area of Texas near Mexico, across Louisiana, Mississippi and Alabama to Southern Florida. It purchases natural gas from suppliers in Texas and Louisiana for sale from its pipeline system to gas distributors for resale and makes direct sales. It is also engaged in the transportation of gas for others. Applicant's sales and transportation of gas are primarily for consumers in the State of Florida. In 1965 its deliveries of natural gas were as follows: (Mcf at 14.65 psia)

| | |
|---|---|
| Sales for resale (22.7 percent): | |
| Florida | 31, 596, 511 |
| Texas | 3, 514, 997 |
| Total | 35, 111, 508 |

(Includes sales in Florida of 7,980,887 Mcf to its affiliate, Florida Gas Co.)

| | |
|---|---|
| Direct main line sales (32.6 percent): | |
| Florida | 49, 971, 970 |
| Texas | 381, 400 |
| Louisiana | 19, 842 |
| Total | 50, 373, 212 |

(Includes sales in Florida of 2,346,498 Mcf of 1,030 Btu at 32.6 cents per Mcf to Florida Power Corp.; 2,582,611 Mcf of 1,030 Btu at 32.4 cents per Mcf to Florida Power & Light Co.; and 3,249,734 Mcf of 2,466 Btu at 80.4 cents per Mcf to affiliate, Florida Hydrocarbons Co.)

| Transportation for others delivered in (44.7 percent): | *Received* | *Deliveries* |
|---|---|---|
| Florida | 48, 367, 725 | 49, 620, 350 |
| Texas | 20, 981, 431 | 19, 560, 509 |
| Total | 69, 349, 156 | 69, 180, 859 |

(Includes gas transported in Texas of 7,511,263 received and 6,490,153 Mcf delivered for affiliate, Coastal Production Co. Deliveries in Florida were 17,733,629 Mcf to Florida Power Corp. and 31,886,721 Mcf to Florida Power & Light Co.)

Applicant's pipeline system was constructed pursuant to authorization[1] issued by the Commission and the initial system was completed in 1959 having a daily design capacity of 250,000 Mcf of gas. This capacity was increased to approximately 350,000 Mcf per day by installation of additional compressor horsepower on the original pipeline system.[2] To keep pace with the growth of population, industry and commerce, and the resulting needs for energy, Applicant initiated its mainline looping program. On June 8, 1965, the Commission authorized the installation of approximately 210 miles of 30-inch mainline loops, an aggregate of 30,700 additional horsepower of compression, one new

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[1] Certificates of public convenience and necessity were issued on December 28, 1956 to *Houston Texas Gas & Oil Corporation* and *Coastal Transmission Corporation* (16 FPC 118), a joint project, which were subsequently merged with and into Florida Gas Transmission Company.

[2] Certificate of public convenience and necessity was issued on August 9, 1961 (26 FPC 318).

18-inch supply lateral of approximately 51 miles in length extending from East White Lake Field in Vermilion Parish, Louisiana, to Applicant's existing 24-inch main line near Port Barre, Louisiana, and certain other facilities.[8] These facilities which are now being constructed will increase Applicant's annual average daily capacity to approximately 444,060 Mcf. At East White Lake, Applicant will purchase an average daily volume of 80,000 Mcf of natural gas from Pan American and Austral at the discharge side of Pan American's extraction plant which is being constructed, at an initial price of 19.25 cents per Mcf at 15.025 psia. Pan American was issued on September 15, 1965, a certificate of public convenience and necessity in Docket No. CI65-584 to make this sale, 34 FPC 852.

In 1963, Florida Power & Light Company desired to obtain additional gas for use under boilers in its power plants and discussions were held with various potential suppliers, including Applicant. Florida Power & Light Company was seeking gas at a plant delivered cost not to exceed 34 cents per million Btu and the negotiations were related to this price. As a result of the negotiations with Florida Power & Light Company, Applicant contacted Pan American and initially consideration was given to the purchase of the gas by Applicant and its resale to Florida Power & Light Company. However, it was determined by Applicant that a transportation arrangement similar to an existing transportation arrangement with Florida Power & Light Company was preferable and the present arrangement was consummated with Pan American selling gas to Florida Power & Light Company and Applicant transporting the gas.

Florida Power & Light Company's contract of purchase with Pan American and Austral, to which Applicant is a party, under date of March 12, 1965, is for a 20-year term or until the date of the delivery of 1,424,500,000 MMBtu, whichever first occurs. Pan American is to deliver 100,000 MMBtu per day in 1967 and thereafter for the term of the contract 200,000 MMBtu per day. The gas will be delivered to Applicant at the discharge side of Pan American's extraction plant in the East White Lake Field, and at such additional mutually agreed points as may be required for delivery of the volumes contracted for by Florida Power & Light Company. Pan American's gasoline extraction plant which is being constructed at the East White Lake Field will have an initial capacity of 300 million cubic feet per day and the entire output of this plant will be delivered to Applicant under its gas purchase contract above referred to and under its transportation contract with Florida Power & Light Company dated March 12, 1965. The contract provides for a price of 18 cents per MMBtu for 10 years or until December 31, 1977, whichever occurs first and thereafter at 21.2 cents plus certain additional taxes that may be imposed on the Sellers.

Applicant's contract with Florida Power & Light Company also dated March 12, 1965 is for the same term as the gas purchase contract between Florida Power & Light Company and Pan American and Austral. This transportation contract provides for the gas to be moved from the East White Lake Field or from other mutually agreed points to the following power plants in Florida: Cutler in Dade County; Miami in City of Miami; Port Everglades and Lauderdale in Broward County; Riviera in Palm Beach County; Sarasota in City of Sarasota; Kennedy in Brevard County; Sanford in Seminole County; Palatka in Putnam County; and Turkey Point in Dade County. With the exception of Turkey Point, Port Everglades, Kennedy and Sarasota, the above plants are now receiving gas from Applicant. No gas will be delivered to the Sarasota plant as it has been retired from service. For this transportation, Applicant will charge 16 cents per MMBtu and has agreed with Florida Power & Light Company that it will not file for an increase in transportation rate to exceed 16 cents for a period of 5 years from the date of first delivery or until January 1, 1973, whichever occurs first, except for additional taxes that may be imposed.

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[8] Florida Gas Transmission Company, Docket No. CP65-165, 33 FPC 1223.

The additional facilities necessary to make the proposed deliveries are to be constructed in two phases. Phase I will provide an increase of 96,000 Mcf per day and Phase II an additional capacity of 96,000 Mcf per day, thus increasing Applicant's system capacity to 636,000 Mcf per day. Phase I facilities are to be the extension of main line partial loops from Compressor Station 7 in Louisiana to Miami, Florida area, comprising a total of 172.29 miles of 30-inch main line loops; 137.89 miles of 26-inch main line loops; 88.71 miles of 24-inch main line loops; also an aggregate of 20,700 additional installed horsepower will be installed at 10 existing compressor stations on the main line East of Station 8 at Zachary, Louisiana. Included under Phase I will be a new 22-inch supply lateral from Pan American's East White Lake extraction plant in Louisiana, paralleling the 18-inch supply laterals authorized in Docket No. CP65–165, to the main line, and the construction of sales laterals. Phase II facilities will comprise a total of 96.94 miles of 30-inch main line loops; 70.74 miles of 26-inch main line loops; and 33.27 miles of 24-inch main line loops. The cost of these facilities is estimated at $93,200,000.

Sun contends that a savings in construction costs of approximately $3,000,000 could be made if a single 26-inch supply lateral were constructed from Pan American's East White Lake extraction plant to Applicant's main line in place of the above-mentioned dual 18-inch and 20-inch separate laterals. It would have Applicant's stockholders bear such costs as being an unreasonable expenditure. The 18-inch line has already been authorized and Applicant justified the construction which is going forward on the grounds that it could not jeopardize the entire project in Docket No. CP65–165 by the delay necessarily required for obtaining a certificate in this docket.

To finance Phase I of the project, it is proposed to issue the following securities: $39,900,000 first mortgage pipeline bonds due 1986; $17,000,000 debentures due 1986; and $10,000,000 of preferred stock. For Phase II there will be issued a year later, $14,950,000 of first mortgage bonds due 1987, and $8,000,000 debentures due 1987. In addition, $3,000,000 of internally generated funds will be used for financing the project. Pending the issuance of these securities interim bank financing has been arranged to cover the cost of construction. At the time of the hearing, permanent financing of facilities authorized in the prior Docket No. CP65–165, being the issuance of $25,150,000 first mortgage bonds due 1986 and $11,000,000 debentures due 1986, had not been offered. The bonds are to be offered to institutional investors and the debentures and preferred stock will be issued to the parent, Florida Gas Company, which in turn will issue debentures. When the proposed securities are issued the equity ratio will be approximately 35 percent of total capitalization.

Applicant is now an established natural gas company and no question has been raised as to its ability to finance the additions to its system. A Senior Vice President and Director of the Blyth & Company, Inc. pointed out that Applicant was comparable to Texas Eastern Transmission Corporation and while bonds of Applicant had not been rated, if rated they would be Baa. He was of the opinion at the time of hearing that the bonds would bear an interest rate of 5½ percent and debentures of 5¾ percent. It is estimated that the bonds, debentures and preferred stock will return a net to Applicant of $88,500,000 after expenses of $1,350,000.

Pan American and Austral have not dedicated any gas reserve to meet the contract obligation for delivery of the required volumes. Both the gas purchase contract and the transportation agreement were entered into as of March 12, 1965, and the agreements are mutually dependent upon each other. Pan American, on its own behalf, warrants and agrees that it will provide on a daily basis the contract volumes of gas and in fulfillment of this obligation may offer gas at other points than East White Lake if acceptable to Florida Power & Light Company and Applicant. If gas is offered at another point, the capital costs and any incremental transportation cost incident to a new delivery point are to be borne by Pan American.

No objection has been raised to this type of gas supply contract nor to the ability of Pan American to meet its obligation in furnishing the required volumes of gas. Sun is concerned with the possibility of additional costs to Applicant that might occur if Pan American tendered gas at a delivery point other than the East White Lake. It seeks a condition to the certificate requiring an amendment to the gas purchase contract specifying that the delivery point for the full term will be at the East White Lake or at a point down stream on Applicant's pipeline from the interconnection of the East White Lake lateral. The Staff proposed a certificate condition that no gas shall be sold by Pan American from sources in Texas and requests price conditions attached to the sale. Considering the volume here proposed to be sold and the desirability of having a large amount of latitude and flexibility in meeting the "corporate warranty" obligations stated in the gas supply contract, such conditions as to sources of supply could possibly result in restricting Pan Americans' ability to perform under the contract. They also would place in question Pan American's "corporate warranty" or guaranteed deliveries of the specified volumes of gas, a specific feature of the gas purchase contract. Due to the finding of Commission jurisdiction over the Pan American and Austral sale hereinafter referred to the price conditions can more properly be the subject of further consideration at the time of filing of applications for certificates of public convenience and necessity by the producers.

This supply contract is like the contract approved by the Commission in its order issued September 15, 1965 in Docket No. CI65-584 granting a certificate of public convenience and necessity to Pan American to sell gas to Applicant at the East White Lake. Under that contract, Applicant proposes to take an average day volume of 80,000 Mcf with Pan American being obligated on demand to provide a maximum daily volume of 102,000 Mcf. In that docket the Commission pointed out:

> The warranty-type sale presented here does have the advantage of assuring to the pipeline definite quantities of gas over a specific period of time. By use of this technique pipelines can safely attach reserves without fear of overly rapid development of a dedicated field, which might result in expensive prepayments for gas. The technique has a potential disadvantage in that existing as well as yet undiscovered fields may be attached to a pipeline and abandoned without regulatory action in future years. Here Pan American has indicated that the sales will be made from two specific fields, at least initially; namely, the North Freshwater Bayou Field and Off-shore Block 14 Field. Pan American is an established com-

> pany with a good record of continuing gas exploration and development. In the circumstances, and without intending a broad precedent, we believe the proposed sale may be approved, but a better understanding of the implications of this type of sale may lead to a different view in the future.

As proposed here, the gas to be purchased, or its equivalent in Btus is for use by Florida Power & Light Company under boilers in its electric generating plants. The boilers are so designed that either gas, oil or a combination thereof may be used as fuel. In such circumstances the assurances of a gas supply for the transportation service is not so critical as where service is required by distribution companies or customers unable to burn alternative fuel.

In the original certificate proceeding the Commission was concerned, among other things, with the economic feasibility of the project and its financing. In addition to requiring the submittal of a complete plan for financing, prior to undertaking to put the plan in effect, it was pointed out that the transportation rates did not bear their proper share of costs and required the filing of revised rate schedules. Here the economic feasibility of the service proposed is not an issue.

Applicant's financial position is now sound and the demand for gas is rapidly increasing in its service area. In 1965, operating revenues reached a new high of $44,187,000, an increase of $1,540,000 over 1964. New records were also set in gas deliveries. After the completion of the looping program both under Docket No. CP65-165 and this application 80 percent of the main line from Louisiana to Southern Florida will be a dual system. Delivery capacity will be increased by 77 percent and gross investment in pipeline facilities by 68 percent. The main line looping program lowers the unit cost of service for delivering gas and improves the competitive position of Applicant in the Florida energy market.

At the proposed T-3 rate of 16 cents, the rate of return on the cost of the additional facilities included in this application is estimated by Applicant to be 6.52 percent, 6.72 percent and 6.85 percent for the first three years computed on the 200,000 MMBtu per day service.[4] Applicant's unit cost of service per MMBtu comparison based on the year 1968 as a result of the expansion program is as follows:

| | Sales for resale (firm and interruptible) | Transportation |
|---|---|---|
| | *Cents* | *Cents* |
| Without CP65-393 facilities | 43.6 | 19.3 |
| With CP65-393 facilities | 42.0 | 18.1 |
| By adding a future expansion increment of 100 MMcf of resale gas | 41.0 | 16.9 |
| By adding on another future expansion increment of 164 MMcf of resale gas | 38.3 | 14.6 |

Applicant proposes upon the granting of this application and when deliveries of gas commence from the expanded facilities for which authorization is here sought, to reduce its currently effective firm resale rate, designated as Rate Schedule G and the transportation rates, designated as Rate Schedule T-1, for service to Florida Power Corporation, and Rate Schedule T-2, for service to Florida Power & Light Company. The effective rates and as proposed per MMBtu is as follows:

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[4] Applicant estimates at a 17-cent rate, the incremental rate of return would be 6.95 percent, 7.17 percent, and 7.32 percent.

| Rate schedule | Present rate | Proposed rate | 1968 Volume MM Btu | Annual savings |
|---|---|---|---|---|
| | *Cents* | *Cents* | | |
| T-1 | 17.9 | 16.0 | 18,250,000 | $346,750 |
| T-2 | 21.9 | 20.0 | 32,850,000 | 624,150 |
| G | 57.0 | 54.7 | 17,566,850 | 404,038 |
| Total | | | | 1,374,938 |

The contract of March 12, 1965 with Florida Power & Light Company naming the transportation rate of 16 cents per MMBtu for gas delivered is designated as Rate Schedule T-3 by Applicant.

On August 16, 1965, Applicant filed for an increase in its transportation rates of approximately $1,732,000 annually. The T-1 rate was increased from 14.5 cents per MMBtu to 17.9 cents and the T-2 rate was increased from 18.5 cents per MMBtu. The Staff also requests a condition that when the delivery of the ber 1, 1965, and the rates were made effective on motion by Applicant pending hearing thereon and are being collected subject to refund.[5]

The Staff takes exception to the proposed T-3 rate of 16 cents per MMBtu as not covering full allocated cost of service plus a rate of return of 6½ percent. It seeks a condition to the certificate requiring an initial rate of 17 cents per MMBtu. The Staff also requests a condition that when the delivery of the additional 200,000 MMBtu of gas under the T-3 rate schedule commences that Applicant be required to file revised rates to its presently effective schedules naming 51.6 cents per MMBtu for Rate Schedule G; 13.7 cents per MMBtu for Rate Schedule T-1 and 23.2 cents per MMBtu for Rate Schedule T-2. In arriving at the above rates, the Staff used 1969 as the test year and made adjustments in Applicant's cost of service for the year 1969 to reflect the exclusion from the rate base of $7,936,545 as required by the Commission's decision in *Florida Gas Transmission Company,* 31 FPC 1402, and eliminated $129,000 of sales promotion expense. This decision was appealed to the United States Court of Appeals for the Fifth Circuit, Nos. 21957, 22089 and 21964, and on June 13, 1966 reversed and remanded to the Commission, 362 F. 2d 331. Should the decision of the Fifth Circuit become final, then the Staff recommends the following rates for Rate Schedule G, 52.7 cents; Rate Schedule T-1, 14 cents; Rate Schedule T-2, 23.7 cents and for the proposed Rate Schedule T-3, 17.35 cents. Applicant concedes that on transportation, as a class of service, it will earn at proposed rates less than 6½ percent on a fully allocated cost basis.

Sun objects to the T-3 rate of 16 cents contending that it should be initially set at not less than 17.6225 cents per MMBtu with the revisions for refund down to 16 cents depending on the level established in a subsequent rate proceeding, as the cost of rendering the T-3 service based on Applicant's own figures reflect fully allocated costs and a rate of return of 6½ percent, is in this range. Sun's cost of service study for the year 1968 reflecting adjustments to plant accounts and reduced allowances for income taxes, plus return of 6½ percent shows a rate of 14.0902 cents per MMBtu for service under the T-1 rate schedule, for T-2 service 18.0902 cents and for T-3 service 15.5902 cents.

Sun's interest is related to the existing rates under the T-1 and T-2 rate schedules. Under its sales contracts the price of gas received by Sun fluctuates depending, among other things, on the transportation charges by Applicant. It does not object to the 16-cent rate named in the T-3 rate schedule provided that Applicant does not shift any deficiency in the cost of service plus a reasonable rate of return to the charges under the T-1 and T-2 services. Sun also objects, by reason of its existing sales contracts, to the favored-nation clauses set forth in Article XVII of the transportation agreement dated March 12, 1965, between Applicant and Florida Power & Light Company designated as Rate Schedule T-3. The favored-nation provisions are for the purpose of assuring Florida Power & Light Company that it will not be charged a higher rate for comparable service offered by Applicant to a third party and the contract sets forth the procedure for a change in the rate. Sun points out that Applicant regards the T-1 and the proposed T-3 service as "generally comparable" and that because of the favored-nation provisions, Applicant would impose upon Sun the burden of an increase in the T-1 rate. It is, however, Sun's contention that the T-1 and the T-3 services are not comparable. If these services are not comparable as Sun alleges, then it has no complaint. As hereinafter pointed out, this is a matter to be considered in a rate proceeding.

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[5] Docket No. RP66-4.

The differences between the cost of service studies, aside from the abovementioned adjustments, result from the Applicant employing a system-wide allocation method utilizing three basic cost allocation groups: total resale, total transportation, and total direct industrial. The level of the T-1 and T-2 transportation rates were based on the negotiated T-3 rate of 16 cents. T-1 service is considered by Applicant to be comparable to the T-3 proposed service (gas from Louisiana) and giving consideration to the historical difference of 4 cents, the T-2 rate (gas from Texas) was fixed at 20 cents. The Staff's cost of service results from the use of a mileage allocation of costs, known as the demand-mile, commodity-mile method, with the transportation group broken down between the service under T-1, T-2 and T-3 rate schedules. Sun's cost of service reflects segregated costs as to segments of the system designated as laterals and the allocation of certain of the costs of such pipeline segments directly to sale or transportation on an annual volume basis. With respect to the remainder of the system an average cost of service allocation on a demand-commodity basis was employed. Sun utilizes a single transportation class for cost allocation with the level of rates as between T-1 and T-2 reflecting the historical 4 cents difference and increasing the T-3 rate by 1.5 cents by reason of the additional mileage over which the gas will be transported.

Applicant's studies reflect the following rates of return as to class of service and over-all, *to wit:*

|  | Per company exhibits | Adjusted for proposed "G" rate and excluding plant adjustments from cost of service |
|---|---|---|
|  | *Percent* | *Percent* |
| 1968: |  |  |
| Sales for resale | [1] 6.82 | [2] 6.69 |
| Transportation | [3] 6.03 | [3] 6.19 |
| Direct sales | 6.87 | 7.09 |
| Overall company | 6.45 | 6.57 |
| 1969: |  |  |
| Sales for resale | [1] 6.99 | [2] 6.84 |
| Transportation | [3] 6.12 | [3] 6.28 |
| Direct sales | 7.22 | 7.46 |
| Overall company | 6.63 | 6.74 |
| 1970: |  |  |
| Sales for resale | [1] 6.95 | [1] 6.80 |
| Transportation | [3] 6.17 | 6.33 |
| Direct sales | 7.63 | 7.87 |
| Overall company | 6.76 | 6.86 |

[1] "G" at 57.0 cents per MMBtu.
[2] "G" at 54.7 cents per MMBtu.
[3] T-1 at 16.0 cents per MMBtu; T-2 at 20.0 cents per MMBtu; T-3 at 16.0 cents per MMBtu.

The average charge of the above direct sales is 34.4 cents, 35.0 cents and 36.4 cents per MMBtu, respectively, for the years 1968, 1969 and 1970. The average charge in the year 1965 for the direct sales on an MMBtu basis to Florida Power & Light Company was 31.46 cents and to Florida Power Corporation 31.65 cents.

The levels of the proposed adjusted T–1 and T–2 transportation rates were based on the negotiated 16 cents rate. Faced with competition it was apparent the 16 cents was the highest rate Applicant could obtain for the proposed service. This rate together with the purchased gas cost at 18 cents per MMBtu for the first 10 years will make the total gas cost to Florida Power & Light Company approximately 34 cents per MMBtu. Florida Power & Light Company takes the position that if the transportation rate is higher than 16 cents it is doubtful whether accepting the service would be justified.[6]

The Florida Gas System is a dynamic one operating at a load factor in excess of 95 percent and Applicant points out that by 1968 additional growth will occur and the proposed transportation rate under a system expansion of 100 MMBtu will result in excess revenues of 0.2 cents per MMBtu and under an additional expansion of 164 MMBtu the excess revenue will be 2.5 cents and the over-all rate of return will also exceed 6½ percent. Applicant is so confident that increased earnings will occur that it offered a moratorium not to raise the transportation rates for a period of five years and, already a three-year moratorium exists as to the G rate schedule, as set forth in the Commission's order issued in CP65–165.

In a certificate proceeding such as here involving a major expansion, it is necessary to determine if the proposed service will have an undue adverse financial impact on the company. From the studies submitted, it is apparent that the service as proposed, will financially benefit Applicant by a reduction in unit costs of delivering gas on its system. This reduction in costs brought about the proposed future reduction by Applicant in its existing rates covering service under the G, T–1 and T–2 rate schedules. While none of the transportation rates recover, according to the Applicant, a reasonable rate of return, it is willing to forego the additional revenues. Applicant recognizes that any difference in revenues below a reasonable rate of return for the transportation service should not be borne by the resale customers. However, Applicant's estimate of earnings as between classes of service discloses that the sales for resale will earn in excess of a 6½ percent rate of return and the return for transportation service will be less than 6½ percent.

The Staff's proposal to increase the T–2 and T–3 rates and Sun's proposal to increase the T–3 rate do not recognize that the Applicant may forego certain revenues. This is specifically provided for by Section 5(a) of the Natural Gas Act, which provides "* * * That the Commission shall have no power to order any increase in rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company * * *."

Only in a certificate proceeding where the financial soundness of an Applicant is questionable and as a result, a certificate of public convenience and necessity cannot issue because of insufficient earnings, is the requirement, as a condition to the granting of the certificate, appropriate that Applicant increase rates for the proposed service. This is not the case here. As to existing rates, Section 4(d) of the Natural Gas Act provides the procedure under which a natural gas company may change its rates and Section 5(a) the procedure under which the Commission is authorized to change existing rates. Neither of such procedures is a part of this certificate proceeding. Further, the adjustment in the existing rates is based on estimates for the year 1969. The Commission's policy in changing existing rates is to use a test period covering actual operating experience which is adjusted for known changes. The estimates are not within the period of time for the base and test periods set forth in Section 154.63(e)(2) of the Commission's Regulations under the Natural Gas Act. In this certificate proceeding, it would be unreasonable to adjust Applicant's existing rates and the proposed T-3 rate.

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[6] Florida Power & Light Company in its brief refers to a 4½ cent differential per MMBtu in favor of fuel oil cost as compared with the 34 cent per MMBtu as to cost of gas. It does not pay 29½ cents for fuel oil. Florida Power & Light Company's own exhibit shows an average cost of oil for 1964 of 33.07 cents per MMBtu, and a like cost for 1963, the lowest in the past ten-year period. In 1964, the fuel oil costs at its various plants ranged from 32.3 to 36.9 cents per MMBtu.

In the order setting the application for hearing, the Commission recognized this difference in procedure and also as to the issues and evidence required in a rate case as distinguished from a certificate case and specifically instructed the Presiding Examiner to admit only such evidence relevant to a certificate case. The evidence presented by the Staff and Sun is germane as it points out the effect that the proposed service may have on Applicant's rates which is a factor bearing on the public interest. Applicant is now on notice that in a future rate proceeding the method of allocating costs will be an issue as a result of the above allocation methods submitted herein.

Applicant states: "The primary reason for Power Company entering into the contract for the additional supplies of natural gas to be provided by this project is its desire to alleviate a serious air pollution problem on Florida's lower East Coast, which is caused by the burning of high sulfur fuel oil in its electric generating plants."

The burning of gas under boilers of electric power plants does reduce the emissions from the stacks of such plants into the atmosphere of sulfur oxides and other contaminants. The calculations made as to the emissions of sulfur dioxide as a result of burning fuel oil in the plants of Florida Power & Light Company were based upon several unsupported assumptions and based on future operations which may or may not occur. More important there was no sampling of the air in the vicinity of the plants for the purpose of determining the accumulation of pollutants. Almost all of the complaints made as to air pollution were directed to the visibility of plumes from the boiler stacks. Florida Power & Light Company proposes to burn a mixture of 30 percent gas and 70 percent fuel oil. This mixture is found to be sufficient in its plants to effectively eliminate the visibility of plumes and as a result the complaints from the public. Just the elimination of stack plumes is not the answer to the air pollution problem resulting from the burning of fuel oil in the power plants. The problem of sulfur dioxide emissions are still present though such emissions are reduced with the volumes of gas burned. A serious air pollution problem may exist in the vicinity of the power plants of Florida Power & Light Company but the extent of such pollution cannot be determined from this record.

The Department of Health, Education, and Welfare would restrict the use of gas first to Florida Power & Light Company plants at Port Everglades, Fort Lauderdale, Riviera and Cape Kennedy, with only surplus gas moving to the Turkey Point plant which is near Homestead and about 30 miles south of Miami. Sun contends that the record supports this restriction on use of the gas at the Turkey Point plant.

The Turkey Point plant is now under construction with the first units scheduled to be in operation at the end of this year. The Department of

Health, Education, and Welfare feels that the air pollution problems at Turkey Point do not justify the use of gas. This proposal to restrict gas moving to Turkey Point was not raised at the hearing. Consequently, the views of the state and local authorities are not known as to such a restriction, other than their expressed approval of the project as proposed. The effect of such a restriction on the feasibility of this project is not known.

The issue of jurisdiction as to Pan American and Austral is raised by the Commission in its order issued January 17, 1966, setting this application for hearing. The order provides for Applicant to "show cause why Pan American Petroleum Corporation and Austral Oil Company should not be subject to the provisions of the Natural Gas Act." The Staff has taken the position that these producers are subject to the Commission's jurisdiction.

The usual transportation arrangement is not present in this proceeding. What Florida Power & Light Company is concerned with is the number of British thermal units "Btu" delivered by Applicant and the assigning of the Btus delivered as between the direct sale and transportation contracts is for billing purposes. It is recognized by Applicant and Florida Power & Light Company in their contract that the gas delivered to Applicant for transportation will be commingled in Applicant's transmission system with other gas received directly or indirectly from other producers, and that the specific gas of Florida Power & Light Company delivered to Applicant by Pan American pursuant to contract cannot be redelivered by Applicant to Florida Power & Light Company.

The gas from Pan American's extraction plant in the East White Lake area of Louisiana, originating in various fields, will be used to meet an average daily quantity of 80,000 Mcf to be sold by Pan American to Applicant for sale and resale under certificates of public convenience and necessity issued on June 8, 1965 in Docket No. CP65–165 and on September 15, 1965 in Docket No. CI65–584, as well as the 200,000 MMBtu per day for transportation by Applicant to Florida Power & Light Company as proposed in this docket. The deliveries from Pan American's plant will be at one delivery point where the total volume will be metered and the Btu content measured. The gas will move into two lateral lines, the 18-inch lateral authorized in CP65–165 and the adjacent 22-inch lateral for which authorization is sought by this application. For accounting purposes the first 200,000 MMBtu in the commingled stream will be considered transportation gas and the balance will be considered gas that Applicant purchases from Pan American. Thence, the gas will be transported to Applicant's main line and again commingled with the gas stream originating in Louisiana and Texas.

As above-mentioned, Applicant's parent, Florida Gas Company, owns and operates through another subsidiary, Florida Hydrocarbons Company, a hydrocarbon extraction plant located at Brooker, Florida, for the removal of propane, butane and natural gasoline from the pipeline's gas stream and a blending facility which produces automotive gasoline. The liquid extraction plant sold 80,238,000 gallons of products in 1965. The Btu of the natural gas moving into the pipeline stream ranges from a high of 1155 per cubic foot to a low of 998. It is contemplated that initially the gas moving from the Pan American extraction plant in the East White Lake will have a Btu content of 1043 and such Btu content will range during the first 10 years of operation between 1040 and 1050. The commingled stream of gas moving into the hydrocarbon extraction plant from all sources will have a Btu content of approximately 1065.7 and the main gas stream will be reduced to a Btu content of 1036 at the discharge side of the plant for delivery in Florida. In addition to the commingling, the character of the gas delivered from Applicant's pipeline is materially changed by this extraction plant operation. To compensate Florida Power & Light Company for the difference in the Btu content of gas delivered, Applicant will deliver additional volumes of its own purchased gas.

Under the contract of sale with Florida Hydrocarbons Company, as Buyer, the Applicant, as Seller, warrants that it has lawful possession of the gas delivered to Buyer, lawful right to deliver such gas for processing and lawful right to sell, and title to, the hydrocarbons extracted from such gas and purchased thereunder and that such hydrocarbons are free from all liens and adverse claims, and Seller will indemnify Buyer against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of any adverse legal claims of any and all persons to or against the hydrocarbons. The contract also provides that Buyer would not reduce the net heat content of Seller's gas stream at the point where the gas stream re-enters Seller's main pipeline below 1010 Btu per cubic foot nor render it unmerchantable; and provides that Buyer shall never be required to redeliver to Seller gas having a Btu content in excess of that which Buyer receives.

Applicant also has a direct sales contract with Florida Power & Light Company and the latter is required to purchase or pay for all gas tendered by Applicant within the volumes therein specified. The determination of the volumes of gas transported as distinguished from the volumes of gas sold by Applicant to Florida Power & Light Company is accounted for by considering the first volumes delivered as being gas transported and the balance of the gas as being sold under the direct sales contract.

From the foregoing, it is clear the transportation contract is only a matter of contractual convenience. The Pan American and Austral gas moving from the East White Lake plant under the designated transportation contract, cannot be sufficiently identified so as to consider it as being gas transported apart from other gas purchased by Applicant and sold both for direct use and for resale.

The contract arrangements between Pan American and Austral with Florida Power & Light Company and Florida Gas Transmission Company cannot be used to deprive the Commission of jurisdiction over the sales of gas by Pan American and Austral.

In *Montana-Dakota Utilities Co., et al.*, 30 FPC 200, 205, 206 (1963), the Commission in asserting jurisdiction over producer contracts pointed out that where gas is injected into a stream carrying intrastate gas that there is no way of identifying the gas so injected, and stated:

> In its *Lo-Vaca* opinion, the Commission noted that the earlier *Montana-Dakota* case was distinguishable stating that "The *North Dakota* case presents a far more limited situation with a single source of supply within the state than that presented here." In view of the additional source of supply now provided by Texaco and Hunt-Herbert, MDU's operations have changed significantly from those before us in the previous case. Thus, *Lo-Vaca* rather than the earlier *Montana-Dakota* decision should now be the controlling authority. Furthermore, we believe that Commission jurisdiction attaches regardless of the additional source of supply. In our opinion, the previous *Montana-Dakota* decision failed to take appropriate account of the fact that the gas as sold and delivered into MDU's pipeline by Amerada and Signal cannot be identified as gas for interstate use or gas for intrastate use, but constitutes a commingled and indistinguishable flow through an integrated interstate pipeline system in interstate commerce. In our judgment all of the gas sold and delivered to MDU by Amerada and Signal at Tioga is sold in interstate commerce,

and the sales and the contracts under which they are made are subject to our jurisdiction.

The Supreme Court, by a *per curiam* opinion, *F.P.C.* v. *Amerada Petroleum Corporation, et al.*, 379 U.S. 687 (1965), upheld the Commission in the asserted jurisdiction over the sales referred to in the above *Montana-Dakota* decision and pointed out that the jurisdiction of the Commission cannot be avoided by contract terms contrary to the actualities of the pipeline transportation.

In *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366, 369 (1965), the Supreme Court upheld the Commission's asserted jurisdiction over sales to El Paso Natural Gas Company where the contracts provided for restricted use of gas for internal company use either intrastate or, if interstate, not for resale. In that case, it was conceded that some of the gas input would be sold outside of Texas. The Court went on to point out that the Commission's jurisdiction follows the flow of gas, an engineering and scientific, rather than a legalistic or governmental, test and stated:

> The fact that a substantial part of the gas will be resold, in our view, invokes federal jurisdiction at the outset over the entire transaction.

Based on the above decisions and the arrangements between the parties under which the gas is to be delivered to the Florida Power & Light Company plants, both Pan American and Austral will become natural gas companies subject to the Commission's jurisdiction and such delivery will constitute a direct sale by Applicant to Florida Power & Light Company. If the direct sale is to be made under terms similar to the present direct sale contract, Applicant will be assured of full use of its facilities.

The Staff does not object to the issuance of a certificate to Applicant authorizing the proposed transportation service provided that before the certificate becomes effective, Pan American and such other producers as may seek to sell gas to Florida Power & Light Company, shall file applications for certificates of public convenience and necessity. In support of the above arrangement, the Staff states:

> Pan Am sells natural gas to FP&L (this is a sale within the meaning of 1(b) of the Natural Gas Act). FP&L then delivers this gas to Florida Gas, which, because of the commingling of the gas in Florida Gas' transmission line, physically redelivers different molecules of natural gas to FP&L.[14] This exchange of gas molecules between FP&L and Florida Gas is a *sale*, and since it follows Pan Am's sale to FP&L, it is a *resale* of Pan Am's gas (*i.e.*, a "resale" within the meaning of 1(b) of the Natural Gas Act). The resale (*i.e.*, exchange of gas molecules) is consummated *in Florida at FP&L's generating plants* (*i.e.*, in "interstate commerce" within the meaning of the Natural Gas Act). The jurisdictional criteria promulgated in 1(b) of the Natural Gas Act are thereby satisfied.
>
> [14] Florida Gas, by the same token, would deliver some of the gas molecules received from FP&L to its other markets.

The Staff's arrangement by retaining the transportation contract, is incompatible with the basis for the assertion of jurisdiction which rests on the commingling of the gas in Applicant's system. Under such an arrangement, by reason of a part of the gas purchased by Florida Power & Light Company being delivered by Applicant to distributors for resale, Florida Power & Light Company also becomes a natural gas company subject to the Commission's jurisdiction under the Natural Gas Act.

Neither Applicant's similar existing transportation arrangements under its T-1 and T-2 rate schedules filed pursuant to authorization issued in 1956, prior to the above jurisdictional decisions, nor the desirability of the service as proposed for which authorization is here requested can alter the fact that the Commission will have jurisdiction over the sale by Pan American and Austral.

Sun has in its reply brief made a derogatory attack on the Staff stemming from the Staff's position not coinciding with its own. This attack is unjustified. The Staff should be commended for its part in bringing to the fore the problems associated with this application.

### ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record and the briefs filed in this proceeding, it is found and concluded in addition to the findings and conclusions heretofore stated that:

(1) The proposed arrangements by the parties for the delivery of gas to Florida Power & Light Company do not conform to the provisions of the Natural Gas Act and the requested certificate of public convenience and necessity by Florida Gas Transmission Company cannot issue.

(2) The parties should be given an opportunity to work out new arrangements in accordance with the requirements of the Natural Gas Act.

WHEREFORE, *It Is Ordered*, subject to review by the Commission, that the application of Florida Gas Transmission Company in the above Docket No. CP65-393 is hereby denied, without prejudice.

ALVIN A. KURTZ,
*Presiding Examiner.*

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP67-176

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 1, 1967)

On December 20, 1966, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP67-176 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to attach new natural gas reserves located in Block 17 Field, West Cameron Area Offshore, Louisiana, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate approximately 18.1 miles of 10¾-inch O.D. pipeline extending southwesterly from the terminus of its Cameron lateral in the Second Bayou Field, Cameron Parish, Louisiana, to a proposed measuring station in the Block 17 Field, West Cameron Area Offshore, Louisiana.

The total estimated cost of Applicant's proposed project is $1,444,280, of which $26,440 is for the construction of a measuring station. Applicant proposes to finance said project with funds on hand and funds generated internally.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record.

*The Commission finds:*

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Michigan Wisconsin Pipe Line Company, authorizing the construction and operation of the proposed natural gas facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by June 1, 1967.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TOWN OF NAPOLEON, INDIANA AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP67-110

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 1, 1967)

On October 25, 1966, the Town of Napoleon, Indiana (Applicant), filed in Docket No. CP67-110 an application pursuant to Section 7(a) of the Natural

Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Respondent) to sell up to 139 Mcf of natural gas per day to Applicant for resale and distribution in the Town of Napoleon and environs, Ripley County, Indiana, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution system within the proposed service area together with a metering and regulating station near the western end of the town limits, which metering and regulating station will connect with a lateral transmission line owned and operated by the Town of Osgood, Indiana (Osgood).

By order of the Commission issued on September 26, 1966, in Docket No. CP67-15, 36 FPC 696, Respondent was directed to deliver up to 1,103 Mcf of natural gas per day to Osgood. Osgood, Applicant in said proceeding, proposed to construct and operate approximately 7 miles of 4-inch lateral pipeline extending from its city-gate in a northwesterly direction, passing approximately 100 feet west of the Town of Napoleon, to a point of connection with Respondent's transmission system.

Applicant has entered into a 20-year transportation agreement with Osgood under the terms of which Osgood will transport gas from Respondent's facilities to Applicant for Applicant's account.

The total estimated annual and peak day natural gas requirements of Applicant in the third year of proposed operations are 12,466 Mcf and 139 Mcf, respectively. Natural gas service to Applicant will be made pursuant to Respondent's FPC Rate Schedule SGS-C.

The estimated cost of Applicant's proposed facilities is $33,000, which will be financed through the sale of 30-year revenue bonds.

After due notice, no protest, petition to intervene, or notice of intervention has been filed herein.

*The Commission finds:*

(1) Respondent, Texas Eastern Transmission Corporation, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued on March 30, 1949, in Docket No. G-1089 (8 FPC 228).

(2) Applicant, Town of Napoleon, Indiana, is a municipal corporation incorporated under the laws of the State of Indiana and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said town.

(3) It is necessary and desirable in the public interest that Respondent be directed to sell to Applicant up to 139 Mcf of natural gas per day as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to sell up to 139 Mcf of natural gas per day to Applicant for resale and distribution in the Town of Napoleon and environs, Ripley County, Indiana, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP67-179

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SERVICE AGREEMENT FOR FILING

(Issued March 1, 1967)

On December 22, 1966, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP67-179 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delivery and sale for resale in interstate commerce of additional volumes of natural gas to one of its existing customers, Interstate Power Company (Interstate), all as more fully set forth in the application.

Applicant requests authorization to sell and deliver to Interstate under Applicant's Rate Schedule CD-1 an additional Daily Contract Quantity of 350 Mcf of natural gas for resale by Interstate to a firm industrial customer in Clinton, Clinton County, Iowa.

The application states that no additional facilities are required to effectuate the proposed additional deliveries.

Applicant filed on January 13, 1967, a related service agreement reflecting the subject proposal with a request for waiver of the notice requirements of Section 154.22 of the Commission's Regulations so that the filing would be effective the date of the order. Applicant requested waiver so that the delivery of the increased quantities of gas to Interstate could be made as soon as possible.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(3) and (e) of Section 157.20 of such Regulations.

(6) Good cause has been shown for the waiver of the notice provisions of Section 154.22 of the Commission's Regulations so as to permit the related service agreement filed with the Commission on January 13, 1967, to become effective on the date of issuance of this order.

(7) It is appropriate in the administration of the Natural Gas Act and in the public interest to accept for filing the service agreement between Applicant and Interstate filed with the Commission on January 13, 1967, to become effective on the date of issuance of this order.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, authorizing the sale and delivery of up to 350 Mcf of additional natural gas daily as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The request for waiver of the provisions of Section 154.22 of the Commission's Regulations is granted.

(D) Natural Gas Pipeline Company's service agreement with Interstate filed with the Commission on January 13, 1967, is accepted for filing effective on the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP67-183

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 1, 1967)

On December 23, 1966, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP67-183 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation and sale of an additional 25,000 Mcf of natural gas per day to the Peoples Gas Light and Coke Company (Peoples) in order for Peoples to meet the natural gas requirements of its Chicago, Illinois market area, all as more fully set forth in the application.

The proposed additional service will be rendered at existing points of delivery through existing and presently authorized facilities pursuant to Applicant's rate schedule CD-1. Applicant has sufficient capacity to meet Peoples' additional requirements.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The proposed sale of increased volumes of natural gas hereinbefore described, as more fully described in the application in this proceeding, is to be a sale for resale in interstate commerce subject to the jurisdiction of the Commission and is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of increased volumes of natural gas, as proposed in the instant application, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of said Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Natural Gas Pipeline Company of America, authorizing it to increase its sales to Peoples Gas Light and Coke Company by 25,000 Mcf of natural gas per day as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of the Regulations.

(C) The certificate issued by paragraph (A) above is conditioned upon Applicant's filing with the Commission an appropriate revised service agreement with Peoples Gas Light and Coke Company in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-193

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 1, 1967)

On January 3, 1967, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-193 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the delivery of natural gas to Producers Utilities Corporation (Producers) for resale, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate a side valve and a measuring station on its 4-inch line in Carson County, Texas, and to sell up to 3,000 Mcf of gas per day to Producers. Producers serves four communities and several irrigation customers in Armstrong and Carson Counties, Texas, and the gas to be delivered under the requested authorization will be used to supplement Producers' current gas supply. The annual volume proposed to be delivered to Producers under the requested authorization is estimated to be 325,000 Mcf.

The total cost of the proposed facilities is estimated to be $2,400. Producers will reimburse Applicant for all construction costs.

Pursuant to the provisions of Section 157.22 of the Commission's Regulations, Applicant initiated emergency service to Producers on December 9, 1966. This emergency service expired on February 7, 1967, and on that latter date Applicant was granted a temporary certificate authorizing the construction of the proposed facilities and the delivery of up to 3,000 Mcf of gas per day to Producers.

Applicant and Producers have entered into a contract, dated October 20, 1966, providing for the subject sale at a rate of 27 cents per Mcf.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed

transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) Applicant should make the appropriate rate filing covering the sale to Producers within 30 days of final action in Docket No. CP63-41, if the Commission finds in said docket that this type sale is jurisdictional.

(7) Applicant should not invoke the price escalation provision of Article III of its contract with Producers until a final determination is made in Docket No. CP63-41.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to deliver up to 3,000 Mcf of natural gas per day to Producers as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) Applicant shall make the appropriate rate filing covering the sale to Producers within 30 days of final action in Docket No. CP63-41, if the Commission finds in said docket that this type sale is jurisdictional.

(D) Applicant shall not invoke the price escalation provision of Article III of its contract with Producers until a final determination is made in Docket No. CP63-41.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SHENANDOAH GAS COMPANY, DOCKET NO. CP67-216

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 1, 1967)

On January 27, 1967, Shenandoah Gas Company (Applicant) filed in Docket No. CP67-216 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to enable Applicant to transport and sell natural gas on a firm basis to Lockheed Georgia Company's (Lockheed) new plant in Berkeley County, West Virginia, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 1,300 feet of 6-inch I.D. steel pipeline, together with necessary metering and regulating facilities and station piping consisting of 300 feet of 2-inch I.D. steel pipe. The proposed 6-inch pipeline will extend from the terminus of Applicant's existing 6-inch lateral pipeline serving Corning Glass Works, Inc., located near Inwood, West Virginia.

Lockheed's incremental peak day and annual natural gas requirements in the first three years of operation are estimated to be 101.9 Mcf and 7,805 Mcf, respectively. Said volumes of natural gas will be purchased by Lockheed from Applicant pursuant to Applicant's General Service Rate Schedule A filed by Applicant as Exhibit H to its application in Docket No. CP65–287. In accordance with said rate schedule, Lockheed will pay an estimated average cost of approximately 85 cents per Mcf of gas.

The total estimated cost of Applicant's proposed project is $15,000, which will be financed through open account advances from its parent company, the Washington Gas Light Company.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Shenandoah Gas Company, a Virginia corporation having its principal place of business in Washington, D.C., is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 30, 1954 in Docket No. G–1448 (13 FPC 579).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Shenandoah Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP67-143

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 1, 1967)

On November 15, 1966, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP67-143, as supplemented on December 27, 1966, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain gas purchase facilities in Lafourche and Acadia Parishes, Louisiana, and McMullen County, Texas, all as more fully set forth in the application, as supplemented, in this proceeding.

Specifically, Applicant proposes to abandon the following facilities:

(1) Approximately 4,900 feet of 6-inch lateral line and four metering stations located in the Rousseau and Thibodaux Fields, Lafourche Parish, Louisiana. Applicant states that Humble Oil & Refining Company, together with other producers in the Rousseau and Thibodaux Fields, are constructing a processing plant in the Thibodaux Field, and, further, that when said plant is completed, the gas sold to Applicant will be delivered at the tail gate of said plant. Accordingly, Applicant proposes to abandon the described facilities in these fields. Applicant will sell them in place to Humble for $67,119, which price is the remaining undepreciated original cost as of March 1, 1967, plus $1,000 to cover the estimated cost of disconnection.

(2) Approximately 4,500 feet of 3-inch transmission line known as the E. M. Henry No. 1 Well lateral, McMullen County, Texas. Said line will be

**abandoned in place. The reason for the proposed abandonment is that the Henry No. 1 Well is depleted and has ceased production.**

**(3) Approximately 10,670 feet of 8-inch transmission line which is a portion of the Church Point lateral, Acadia Parish, Louisiana. Applicant proposes to abandon this portion since Gulf Oil Corporation in Docket No. CI66-68 was authorized by order issued December 27, 1965, to abandon its sale of gas to Applicant in the Church Point Field. Applicant states that it will attempt to make a sale in place of these facilities.**

**After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.**

**At a hearing held on February 24, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,**

***The Commission finds:***

**(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 145).**

**(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.**

**(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.**

***The Commission orders:***

**(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted.**

**(B) Applicant shall advise the Commission of the date of said abandonments within 10 days of the date thereof.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## CITY OF TACOMA, WASHINGTON, PROJECT NO. 2016

### ORDER APPROVING REVISED EXHIBITS J AND M

**(Issued March 2, 1967)**

**On January 13, 1967 and January 31, 1967, the City of Tacoma, Washington, Licensee for Project No. 2016, the Mayfield-Mossyrock development, on the Cowlitz River in Lewis County, Washington filed for Commission approval revised Exhibits J and M providing for the elimination from the license for Project No. 2016 of 44.35 miles of the proposed 50.45-mile 230-kv line from Mossyrock switchyard to Tacoma. The remaining 6.1-mile section will extend**

from Mossyrock switchyard to a dead-end structure on or near the section line between Sections 27 and 34, T. 13N., R.2E., W.M., at which point it will connect with a proposed Bonneville Power Administration 230-kv line extending 22 miles generally west to BPA's Chehalis substation. This 22 miles of line will not be subject to the licensing requirements of the Act since this Commission is not authorized to issue licenses to agencies of the United States Government. Were the line to be owned by Licensee, it would function along with other lines as a part of a primary transmission line of the project and thereby be subjected to Commission jurisdiction under Section 3(11) of the Act. Although title to this BPA line will be in the United States, the line will be built at the Licensee's expense, which amount will be credited to the charges to the Licensee for wheeling under a power exchange agreement between BPA and the licensee.

The Licensee and the Bonneville Power Administration have executed contracts providing for the above line construction and for the exchange of power which would accomplish the delivery of the equivalent of generation by the Mossyrock powerplant to the Tacoma service area. The exchange agreement provides for an initial term through December 31, 2001, and for additional terms of 20 and 30 years thereafter. The agreement also gives the licensee the right to terminate the same upon five years' notice in the event that the Licensee finds it necessary or desirable to later construct its own transmission facilities.

The Licensee states that the proposed change is necessary and desirable as it would result in the most economical and efficient distribution and use of project power. The long-term agreement for power exchange eliminates (1) the need for acquisition of valuable and high cost timber lands for construction of 44.35 miles of the originally proposed 50.45-mile 230-kv line and (2) the investment of capital that can be best utilized for other project purposes. The licensee also states that the agreements further assure the orderly completion of the project transmission requirements within the time schedules previously approved by the Commission.

The effect of the proposed arrangement will be to forego the inclusion of this 22 mile segment of a primary transmission line from the Commission's licensing jurisdiction. In the exercise of that jurisdiction we should act so as to assure the use of primary lines to achieve the maximum degree of electrical coordination consistent with the public interest and that any wheeling charges imposed for the use thereof are just and reasonable. Under the very special circumstances of this case, the exclusion of this primary line segment from our jurisdiction appears to be justified in light of the significant economic savings which should accrue to both parties and in light of the efforts which both parties appear to have made in this case to achieve a closer coordination of their systems. Similar treatment of any future case of this kind would depend upon as clear a showing of the economic and other benefits to be gained by federal ownership of a primary transmission line.

*The Commission finds:*

(1) The following described revised Exhibit J drawings and Exhibit M conform to the Commission's rules and regulations and should be approved as part of the license for the project.

| Exhibit J | FPC No. | Title, Cowlitz power development |
|---|---|---|
| Sheet 1 | 2016-113 | Location map. |
| Sheet 2 | 2016-114 | General project map. |

*Exhibit M*, dated January 12, 1967, and filed with the Commission on January 31, 1967.

(2) Exhibit J drawings, Sheets 1 and 2 (FPC Nos. 2016-78 and -79) and Exhibit M, dated April 8, 1964, will be superseded and should be eliminated from the license.

(3) By reason of the revision of Exhibits J and M, the last four lines of Paragraph I, Subparagraph (a) on page 1329 of Order Further Amending License, (Major), issued November 17, 1964, 32 FPC 1327, should be modified to delete the clause "and one future 230 kv circuits; single 230 kv transmission line 11.65 miles long to Mayfield and a 50.45 mile 230 kv line to Tacoma" and to replace it by "230 kv circuits and one future 230 kv circuit; a single circuit 230 kv transmission line 11.65 miles long to Mayfield and a single circuit 230 kv transmission line 6.1 miles long to an interconnection point with a Bonneville Power Administration 230 kv line on or near the section line between Sections 27 and 34, T. 13 N., R. 2 E., W. M."

*The Commission orders:*

(A) The revised Exhibit J drawings and Exhibit M described in finding No. 1 above are hereby approved as part of the license for Project No. 2016, and the superseded exhibits described in finding (2) above are hereby eliminated from the license for the project.

(B) Paragraph I subparagraph (a) of ordering clause (B) in the license order dated November 17, 1964 is modified to read as follows:

> The Mossyrock Development will be located on the Cowlitz River at river mile 66 at the head of the Mayfield Reservoir, and will consist of a double curvature concrete arch dam founded on basalt bedrock with concrete thrust blocks near the top of each end; maximum dam height to the crest elevation of 785 feet MSL, (Approximately 585 feet above bedrocks) has a crest length of 1300 feet; spillway with sill elevation at 728.5 feet is surmounted by four 42.5 X 50 foot tainter gates. Normal reservoir water surface will be at elevation 770 feet providing a usable storage capacity of 1,297,000 acre-feet with a drawdown of 170 feet. A conventional indoor-type powerhouse located at toe of dam containing two 150,000 kilowatts generating units (412,000 horsepower); a third blocked-out unit monolith, provides for the addition of a third 150,000 kw unit; short penstocks from intakes on upstream face of dam to powerhouse; transformer station; switchyard designed for two initial 230 kv circuits and one future 230 kv circuit; a single circuit 230 kv transmission line 11.65 miles long to Mayfield and a single circuit 230 kv transmission line 6.1 miles long to an interconnection point with a Bonneville Power Administration 230 kv line on or near the section line between Sections 27 and 34, T. 13 N., R. 2 E., W. M.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## GREAT LAKES GAS TRANSMISSION COMPANY, DOCKET NOS. CP66-110, CP66-111, CP66-112; MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-109; MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. CP66-119, CP66-120, CP66-121; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-212; NORTHERN NATURAL GAS TRANSPORTATION COMPANY, DOCKET NOS. CP66-213, CP66-214

### ORDER DENYING APPEAL, WAIVING EXAMINER'S DECISION AND GRANTING ORAL ARGUMENT

(Issued March 3, 1967)

On February 3, 1967, Great Lakes Gas Transmission Company, *et al.* (Great Lakes) filed an appeal from the January 24, 1967 ruling of the Presiding Examiner granting the motion of Northern Natural Gas Transportation Company (the Northern Companies) to reopen the record for the receipt of evidence concerning a proposal by the Northern Companies allegedly containing the "essential elements" of an alternative plan submitted by Staff in its brief filed August 26, 1966. Answers to the Great Lakes' motion were submitted by the Northern Companies and our staff.

Northern alleges that its proposed presentation on staff's proposal will show that it is superior to Great Lakes' proposal, but inferior to Northern's. It asserts that the type of plan advocated by the staff, even if improved in material respects, would still not be the optimum method of serving the public convenience and necessity.

Additionally, the Northern Companies' claim that the Great Lakes' project has changed from one of a mere accommodation for Canadians to one that will become increasingly oriented to the importation of large quantities of Canadian gas for consumption in the United States, and that, therefore, the Commission must have a complete record so as to properly determine which alternative provides maximum benefits for United States consumers. The Northern Companies further argue that the grant of Great Lakes' appeal would be contrary to the holdings in *Michigan Wisconsin Gas Company* v. *F.P.C.*,[1] *City of Pittsburgh* v. *F.P.C.*,[2] and *Scenic Hudson Preservation Conference* v. *F.P.C.*[3]

Great Lakes alleges: (1) the Commission can consider the staff's "public interest proposal" without reopening the record; (2) the alternative evidence sought to be put into the record by the Northern Companies does not relate to staff's proposal, but to a modification of the Northern Companies project; and (3) the proffered evidence concerns a proposal that could not be certificated in any event. In addition Great Lakes avers that if the record is reopened for the inclusion of this evidence, the delay would render its project (and the competing Northern Companies project) moot since the Canadian Government would require that other steps be taken immediately.

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[1] 283 F. 2d 204, 224-226 (CADC-1960), cert. denied, 364 U.S. 913.

[2] 237 F. 2d 741, 751 n.28 (CADC-1956).

[3] 354 F. 2d 608 (CA2-1965), cert. denied, 384 U.S. 941.

Requests for the waiver and omission of the examiner's intermediate decision have been filed by Great Lakes, Midwestern Gas Transmission Company, Consumers Gas Company and the St. Lawrence Gas Company. Oppositions have been filed by the Panhandle Eastern Pipe Line Company and the Fuels Research Council, Inc. Great Lakes has also filed a request for oral argument.

We do not decide here whether Northern's evidence constitutes a proper development of the staff's proposal or is essentially a new proposal; we conclude only that the Examiner's determination to receive the evidence, and to permit cross-examination thereon if he determines it to be relevant and material to the making of a complete record, is not inappropriate under the circumstances. It is of no significance that we could not certificate the staff's proposal for our consideration of that proposal could well demonstrate that the public interest would require rejection of each of the pending applications. Therefore, the appeal of Great Lakes will be denied. But our denial should not be interpreted as a ruling on the appropriateness of Northern's submission. We leave that question for resolution together with the merits.

In so concluding we are by no means insensitive to Great Lakes' final contention that the delay resulting from denial of its appeal would render both its project and that of the Northern Companies moot since the Canadian Government would require that steps be taken in the immediate future to assure adequate service to Canadian consumers next winter. It does appear that there is a pressing need for additional natural gas service in Canada, and the Canadian Government has directed Trans Canada to apply, by May 1, 1967, for permission to construct additional facilities in Canada if it believes that transportation service through the United States cannot be authorized in time to install facilities for the 1967–1968 heating season. Presumably Trans Canada would be required to loop its present Canadian line. And, while the record does not indicate precisely how much looping would be required it would appear to be significant. Once that looping program is completed it is questionable whether any of the proposals now before us would still be viable. Moreover, even if the initial looping would not moot the need for transportation service through the United States, it would undoubtedly prejudice significantly Great Lakes' ability to finance its transportation proposal. Certainly the public interest will not be furthered by the elimination of the Great Lakes' alternative without affording this Commission an opportunity to consider it on its merits. Based upon the foregoing we find that the due and timely execution of our functions imperatively and unavoidably requires the omission of the Examiner's decision.

Accordingly, the appeal of Great Lakes is denied and its requests for the waiver of the intermediate decision and for oral argument are granted. Following the expeditious completion of cross-examination which is to commence on March 8, 1967, the Examiner is further directed to certify the record to the Commission for decision. The parties will have 20 days from the close of cross-examination to file initial briefs and 10 days thereafter to file answering briefs. All briefs should be served by air mail. Oral argument will be heard at 10:00 a.m. on April 21, 1967, in a hearing room of the Federal Power Commission at 441 G Street, N.W., Washington, D.C.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-190

### ORDER DENYING PETITION FOR REHEARING AND REQUEST FOR ORAL ARGUMENT

(Issued March 3, 1967)

Ohio Valley Gas Company (Ohio Valley), on February 2, 1967, filed a petition for rehearing of the order issued January 11, 1967, in this docket together with a request for opportunity to present oral argument of its petition. The background of this controversy is fully described in our orders issued March 14, 1966, 35 FPC 376, and January 11, 1967, 37 FPC 88. The following brief summary, however, will serve to put the matter in focus.

In the January 11 order we provided that a superseding service agreement dated January 1, 1966, between Ohio Valley and its supplier, Michigan Wisconsin Pipe Line Company (Mich-Wisc) become effective as of April 14, 1966, instead of March 14, 1966, as prescribed in the order issued on the latter date. That superseding service agreement provided for deliveries of gas to Ohio Valley under Mich-Wisc's Rate Schedule ACQ-1.

Based on presentations made by Ohio Valley in its application filed September 1, 1966, for waiver of penalties, our order issued January 11, 1967, relieved Ohio Valley of $24,795 of penalties (out of a total of $33,340 assessed). That order also determined that the remaining amount was not a penalty but a proper charge under Mich-Wisc's Rate Schedule SGS-1 for gas actually taken.

We have carefully analyzed Ohio Valley's petition for rehearing and find it to be without merit. Ohio Valley's contentions are summed up in its statement that "Having assumed the liability for the rate ACQ-1 during the period from March 14 to April 14, Ohio Valley is entitled to any benefits which accrue to it from ACQ-1 rate during that period***." On its face that claim appears fair. However, it fails to note that in the "liability" assumed was the obligation to pay, at penalty prices, for all unauthorized takes of gas above a fixed percentage of the contract demand. That obligation Ohio Valley requested be waived because it was not given notice that the ACQ-1 Rate Schedule was made effective as to its gas during the period March 14 to April 14, 1966, at approximately its entitlement under Rate Schedule SG-1 and its superseded service agreement. The January 11 order in effect waives that obligation and provides for payment for gas in accordance with the rate schedule Ohio Valley assumed to be effective during the period involved. The contentions reiterated in the petition for rehearing are fully discussed and dealt with in the order issued January 11, 1967.

Ohio Valley's claim that we erred in failing to hold the penalties assessed were illegal and void, is similarly without basis. Our order issued January 11 clearly sets out that under the relief there granted Ohio Valley is not being assessed any penalties. It is only being required to pay for gas actually taken pursuant to the appropriate rate schedule.

*The Commission finds:*

The assignments of error and grounds for rehearing set forth in Ohio Valley's petition filed February 2, 1967, present no new facts or principles of law which were not considered by the Commission when it issued its order on January 11, 1967, or which having now been considered warrant any change or modification of that order.

*The Commission orders:*

Ohio Valley's petition for rehearing and request for oral argument thereon filed February 2, 1967, hereby are denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, ET AL. v. COLORADO-UTE ELECTRIC ASSOCIATION, INC., DOCKET NO. E-7306

### ORDER DENYING APPLICATION FOR REHEARING AND MOTION FOR STAY

(Issued March 3, 1967)

Salt River Project Agricultural Improvement and Power District (Salt River), Phoenix, Arizona, and 10 other members[1] of Colorado-Ute Electric Association, Inc. (Ute), Montrose, Colorado, on February 3, 1967, filed an application for rehearing and motion for stay of the Commission's order issued January 6, 1967, in the above-entitled proceeding.

By our order of January 6, 1967, 37 FPC 68, we dismissed with prejudice (1) a petition filed against Ute by Salt River and other members of Ute, (2) Ute's answer to the petition, and (3) a joint petition for leave to intervene filed by Bridger Valley Electric Association, Inc., and San Luis Valley Rural Electric Cooperative, Inc.,[2] except insofar as those pleadings "raise issues cognizable under Section 202(c) of the Federal Power Act and the related procedural sections of that Act." In addition, our order directed that certain wholesale rate schedules proffered for filing by Ute pursuant to Part 35 of the Commission's Regulations under the Power Act be returned to Ute by the Secretary of the Commission.

The application for rehearing presents no questions which were not fully explored in the Commission's Opinion in the Dairyland case, (Opinion No. 511, issued January 5, 1967, *Dairyland Power Cooperative, et al.*, 37 FPC 12) or which call for a different conclusion here as to Ute's status as a "public utility," and will therefore be denied. This leaves for consideration the stay request which, *inter alia*, is sought for the period of judicial review of our order. If we believed that denial of a stay could irreparably injure the movants we might well grant them the requested relief. But this is not the case. In the absence of judicial reversal (or new legislation giving us the jurisdiction over Ute as we do not believe we have now) we will not take any action, arising either out of the petition and complaint or the rate filing tender, which is dependent upon Ute's status as a "public utility." Consequently, the only practical effect of a stay would be to lodge one extra copy of the rate filing with the Commission. It is clear that this ministerial action would have no legal or practical effect. If it is determined upon review that Ute is a "public utility" within the meaning of the Federal Power Act, its wholesale rates to its customers necessarily will be treated as if they had been filed as of the date of the original tender (or in the Commission's discretion the earlier date sought by Ute) and the situs of the paper on which the filing was made in the interim will be irrelevant.[3]

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[1] LaPlata Electric Association, Inc., Durango, Colorado; San Miguel Power Association, Inc., Nucla, Colorado; White River Electric Association, Inc., Meeker, Colorado; Holy Cross Electric Association, Inc., Glenwood Springs, Colorado; Gunnison County Electric Association, Inc., Crested Butte, Colorado; Yampa Valley Electric Association, Inc., Steamboat Springs, Colorado; Grand Valley Rural Power Lines, Inc., Grand Junction, Colorado; Arkansas Valley G&T, Inc., Pueblo, Colorado; San Luis Valley Rural Electric Cooperative, Inc., Monte Vista, Colorado; and Bridger Valley Electric Association, Inc., Mountain View, Wyoming.

[2] Bridger Valley and San Luis Valley are members of Ute, but they were not included among the original petitioners in this proceeding.

*The Commission finds:*

(1) The assignments of error and grounds for rehearing set forth in the above-described application for rehearing of the order of January 6, 1967, present no facts or principles of law which were not considered by the Commission when it issued the order or which, having now been considered, warrant any change or modification of the order.

(2) The above-described motion for stay of the order of January 6, 1967, should be denied.

*The Commission orders:*

(A) The above-described application for rehearing of the Commission's order of January 6, 1967, is denied.

(B) The above-described motion for stay of the Commission's order of January 6, 1967, is denied.

Commissioner Bagge *dissenting* for reasons stated in his dissent to the order issued January 6, 1967, at p. 70.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. RP67-14

### ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING AND APPROVING CHANGE IN ACCOUNTING PROCEDURE

(Issued March 3, 1967)

South Georgia Natural Gas Company (South Georgia) on January 3, 1967, filed a stipulation, as modified by letter filed February 10, 1967, proposing a reduction in its jurisdictional rates in the amount of $77,376 annually based upon billing quantities for the twelve-month period ending September 30, 1966. South Georgia at the same time tendered for filing Fifteenth Revised Sheet No. 5, Fourteenth Revised Sheet No. 6 and Ninth Revised Sheet No.

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[3] By separate order issued concurrently herewith in this proceeding, the Commission is granting the petitions for leave to intervene filed by the Secretary of Agriculture (Secretary). Dairyland Power Cooperative (Dairyland), Minnkota Power Cooperative, Inc. (Minnkota), and a group which includes rural electric cooperatives, various Statewide Associations of Electric Cooperatives, and a Committee of Rural Electric Cooperatives (Cooperatives, Statewides, and Committee). The Cooperatives, Statewides and Committee stated that they would not oppose Salt River's motion for stay. Dairyland stated that it would oppose the motion for stay. The Secretary and Minnkota were silent concerning that motion.

12B to its FPC Gas Tariff Original Volume No. 1 reflecting the reduced rate levels to become effective October 1, 1966.

The reductions in rates reflected in the stipulation are based upon South Georgia's proposal to flow-through the benefits of liberalized depreciation. As a condition to the proposed rate reduction, South Georgia requests the Commission's approval of South Georgia's discontinuance, effective October 1, 1966, of the use of deferred tax accounting and its adoption of flow-through accounting with respect to the reduction in income taxes resulting from the use of liberalized depreciation. South Georgia also agrees that in the event Southern Natural Gas Company, its sole gas supplier, reduces its rates to reflect flow-through of liberalized depreciation tax benefits, South Georgia will make equivalent reductions in its jurisdictional rates.

The public was given notice of South Georgia's proposed changes in rates and charges by publication in the Federal Register and copies of the filing were served by South Georgia upon its customers and interested State Commissions. No comments have been received.

*The Commission finds:*

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets described above may become effective on October 1, 1966, as hereinafter ordered.

(2) The proposed revised tariff sheets and the rate reductions therein contained are in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

(3) South Georgia's proposed change in accounting procedure described above and its agreement to further reduce rates in accordance with its stipulation are reasonable and proper and should be approved as hereinafter ordered.

*The Commission orders:*

(A) The provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and the revised tariff sheets described above are accepted for filing to become effective as of October 1, 1966.

(B) South Georgia's stipulation filed on January 3, 1967, including its proposed change in accounting procedure, is approved and made effective as proposed therein, and as modified by South Georgia's letter filed February 10, 1967, subject to the terms and conditions of this order.

(C) South Georgia shall comply with the provision of the stipulation relating to future rate reductions.

(D) This order shall not be construed as relieving South Georgia from its existing obligations under the Commission's order in Docket No. RP64-34, issued May 19, 1964, 31 FPC 1273, including obligations relating to future refunds and rate reductions.

(E) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims which may be made by the Commission, South Georgia, the Commission Staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against South Georgia or any other persons or parties affected by this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## BACA GAS GATHERING SYSTEM, INC., DOCKET NO. CP67-159

### FINDINGS AND ORDER AFTER STATUTORY HEARINGS ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 6, 1967)

On December 6, 1966, Baca Gas Gathering System, Inc. (Applicant), filed in Docket No. CP67-159 an application and a supplement thereto on January 18, 1967, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and for the sale of natural gas for resale, all as more fully set forth in the application and supplement thereto.

Applicant seeks authorization to install approximately 12.9 miles of 8-inch pipeline extending from the terminus of Applicant's existing 10″-8″ pipeline in Northwest Flank Field to the Playa Field, Baca County, Colorado, and 4.7 miles of 4-inch and 3-inch field lines in order to extend its existing gathering and transmission system to permit the receipt of gas from the Northwest Flank Field and the Playa Field in Baca County, Colorado, which gas is to be sold to Panhandle Eastern Pipe Line Company for resale.

Panhandle, Applicant's sole customer, will utilize the gas to augment its system supply. Estimated increased and total deliveries in Mcf at 14.73 psia are as follows:

| Year | Increase | Total |
|---|---|---|
| First | 1,485,000 | 4,826 000 |
| Second | 1,378,000 | 4,217,000 |
| Third | 1,202,000 | 3,759,000 |

Panhandle will pay Applicant the presently effective rate of 16¢ per Mcf and Applicant will pay the producers 4 cents per Mcf less.

The total estimated cost of the proposed facilities is $260,000, which is to be financed on an interim basis from bank loans and later by the sale of twelve-year notes and fifteen-year debentures.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 2, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and supplement thereto, submitted in support of the authorization and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Baca Gas Gathering System, Inc., a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 25, 1965, in Docket No. CP65-57 (33 FPC 102).

(2) The proposed construction and operation of facilities and the transportation and sale of natural gas, as hereinbefore described and as more fully described in the application and supplement in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities and the transportation and sale of natural gas as hereinbefore described and as more fully described in the application and supplement in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations by June 1, 1967.

(D) The certificate of public convenience and necessity issued in paragraph (A) is conditioned as follows:

(1) Applicant shall file with the Commission within 30 days of this order the January 3, 1967 amendment to the original contract of August 4, 1964 with Panhandle as a part of Applicant's FPC Tariff.

(2) Applicant shall not construe the issuance of the requested authorization as altering, amending or revoking ordering paragraphs (D) and (E) of the order issued January 25, 1965, in Docket No. CP65-57.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP67-182

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 6, 1967)

On December 23, 1966, Florida Gas Transmission Company (Applicant), filed in Docket No. CP67-182 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant proposes to construct and operate two side taps and valves and one block valve on its existing 12-inch Lake Chicot gas supply lateral pipeline in Iberville Parish, Louisiana, to enable it to transport and deliver natural gas purchased in the Lake Chicot Field, Saint Martin and Iberia Parishes, Louisiana, from Phillips Petroleum Company (Phillips) and Amerada Petroleum Corporation (Amerada) to Phillips and Amerada for fuel and processing for removal of liquefiable hydrocarbons and to receive back residue gas after such processing.

The original contracts covering the subject sale and delivery of gas by Amerada and Phillips to Florida Gas' predecessor, Coastal Transmission Corporation, reserved the producers' right to extract liquid hydrocarbons in the field. No new sales are proposed by Applicant.

The total estimated cost of Applicant's proposed facilities is $18,000 which cost will be paid for from funds furnished by Phillips and Amerada.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 2, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 3, 1963, in Docket No. CP63-277 (30 FPC 27).

(2) The proposed construction and operation of facilities and transportation of natural gas, as hereinbefore described and as more fully described in the application and exhibits, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as hereinbefore described and as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed as authorized in paragraph (A) above as provided for in paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by April 1, 1967.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## FOUNTAINTOWN GAS COMPANY, INC. AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP67-196

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 6, 1967)

On January 5, 1967, Fountaintown Gas Company, Inc. (Applicant), filed in Docket No. CP67-196 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish physical connection of its transmission facilities with the facilities to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution by Applicant in Finley, Fountaintown, Kennard, Morristown, Shirley and Wilkinson, Indiana, all as more fully set forth in the application.

Applicant proposes to construct and operate distribution systems in Shirley, Wilkinson and Kennard, and 5.5 miles of 2-inch and 4-inch lateral transmission line extending from Shirley to Respondent's system; and distribution systems in Morristown, Fountaintown and Finley, and 6.8 miles of 2-inch lateral transmission line extending from Morristown to Respondent's system. Two points of interconnection with Respondent are requested; one for each lateral system.

The estimated number of customers, total peak day and annual natural gas requirements in Mcf at 14.73 psia for the first three years of operation are:

| Year of operation | Customers | Peak day | Annual |
|---|---|---|---|
| First | 560 | 1,344 | 128,921 |
| Second | 698 | 1,605 | 158,192 |
| Third | 833 | 1,861 | 177,284 |

Applicant estimates the total construction cost of proposed transmission facilities and distribution systems to be $471,487.76 with additional costs totaling $116,310 for engineering, legal, organization, interest during construction and working capital, *et cetera*. The total estimated cost of $590,000 will be defrayed from the sale of 20-year first mortgage bonds in the amount of $383,500, and the sale of common stock and equity securities.

On January 30, 1967, Respondent filed an answer to the application and stated therein it had no objection to the entry of an order requiring it to provide the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on January 20, 1967 (32 F.R. 696), No protest, petition to intervene or request for hearing has been filed in this proceeding.

*The Commission finds:*

(1) Respondent, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant and to sell and deliver to Applicant, under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations under the Natural Gas Act, up to 1,861 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) The requirement that Respondent serve Applicant as hereinafter ordered, will not impair Respondent's ability to render service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in Shirley, Wilkinson, Kennard, Morristown, Fountaintown and Finley, Indiana, and environs within one year from the date of issuance of this order.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 1,861 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent and filed with the Commission in accordance with the Commission's Regulations. Such service shall be rendered pursuant to Respondent's currently filed applicable Rate Schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## THE MANUFACTURERS LIGHT AND HEAT COMPANY, DOCKET NO. CP66-344 AND BLACKSVILLE OIL AND GAS COMPANY, DOCKET NO. CP67-144

### FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND DETERMINING SERVICE AREA

(Issued March 6, 1967)

On April 29, 1966, The Manufacturers Light and Heat Company (Manufacturers), filed in Docket No. CP66-344 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Blacksville Oil and Gas Company (Blacksville), natural gas facilities consisting of approximately 2.8 miles of 4-inch transmission pipeline, situated in Wayne Township, Greene County, Pennsylvania, and in Clay District, Monongalia County, West Virginia, all as more fully set forth in the application in said docket.

On November 21, 1966, Blacksville Oil and Gas Company (Blacksville), filed in Docket No. CP67-144 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of the aforesaid natural gas facilities and, pursuant to Section 7(f) of said Act, for a service area authorization, all as more fully set forth in the application in said docket.

Manufacturers proposes to abandon by sale to Blacksville approximately 2.8 miles of transmission pipeline No. 773, commencing at a point in Wayne Township, Greene County, Pennsylvania, and continuing in a southwesterly direction to the terminus of said line in Clay District, Monongalia, County, West Virginia.

Manufacturers states that the pipeline originally was constructed for the purpose of transporting natural gas produced in Clay District, Monongalia County, West Virginia, northward into Pennsylvania and that since 1954, this line has been used solely by Manufacturers for the purpose of supplying gas at retail to customers residing in the vicinity of said line. Manufacturers further states that since its distribution system in northern West Virginia is approximately 20 miles from Line No. 773, the continued rendition of retail gas service in this area is uneconomical and that all of the customers served by the subject line have consented to its discontinuance of service with the understanding that gas service will be supplied by Blacksville at no extra cost.

The West Virginia Public Service Commission has, by order issued February 7, 1966, in case No. 6194, approved the subject sale to Blacksville.

Blacksville proposes in Docket No. CP67-144 to acquire from The Manufacturers Light and Heat Company and operate approximately 2.8 miles of 4-inch transmission pipeline situated in Wayne Township, Greene County, Pennsylvania, and Clay District, Monongalia County, West Virginia, and to operate approximately 4.6 miles of various ½-inch to 7-inch pipeline in the aforementioned counties. Such facilities are proposed to be utilized in the distribution of natural gas to retail customers.

Under Section 7(f) Blacksville requests a service area determination which will include the Town of Blacksville, Monongalia County, West Virginia and the immediately adjacent Wayne Township, Greene County, Pennsylvania.

The estimated cost of Blacksville's acquisition is $2,275, which cost will be paid from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of either of the applications, has been filed.

At a hearing held on March 2, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) The Manufacturers Light and Heat Company, a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G-593, *et al.* (4 FPC 821).

(2) Blacksville Oil and Gas Company, a West Virginia corporation having its principal place of business in Blacksville, West Virginia, will be a "natural-gas company" within the meaning of the Natural Gas Act, upon the acquisition of facilities and commencement of operations as proposed herein.

(3) The facilities proposed to be abandoned by Manufacturers, as hereinbefore described and as more fully described in the application filed in Docket No. CP66–344 are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) The proposed abandonment of the aforesaid facilities by Manufacturers is permitted by the public convenience and necessity and permission and approval thereof should be granted as hereinafter ordered.

(5) The proposed acquisition and operation of facilities, and the transportation of natural gas in interstate commerce by Blacksville, as hereinbefore described and as more fully described in the applications filed in Docket No. CP67–144 are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) The aforesaid proposed acquisition and operation of facilities and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Blacksville is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Blacksville's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

(9) Public convenience and necessity require that the Commission pursuant to Section 7(f) of the Natural Gas Act, determine the service area of Blacksville as requested in the application filed herein in Docket No. CP67–144.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Manufacturers of the facilities hereinbefore described, as more fully described in the application in Docket No. CP66–344 is granted.

(B) A certificate of public convenience and necessity is issued to Blacksville in Docket No. CP67–144 authorizing the acquisition and operation of facilities and the transportation of natural gas as hereinbefore described, all as more fully described in the application thereto filed in said Docket No. CP67–144.

(C) The service area of Blacksville Oil and Gas Company shall consist of and embrace the area of the Town of Blacksville, in Monongalia County, West Virginia, and the immediately adjacent area of Wayne Township, Greene County, Pennsylvania.

(D) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Blacksville's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

(E) Manufacturers shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(F) The acquisition authorized in Docket No. CP67-144 shall be completed and the transportation of gas authorized in paragraph (B) above shall commence, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

(G) Manufacturers shall file with the Commission a revised service agreement with Blacksville reflecting the proposed changes in volumes of natural gas and in the delivery point.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP67-185

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 6, 1967)

On December 27, 1966, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP67-185 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of additional daily contract quantities of 15,000 Mcf of natural gas for resale in interstate commerce to an existing customer, all as more fully set forth in the application.

Applicant seeks authorization to sell and deliver an additional daily contract quantity of 15,000 Mcf of gas to Illinois Power Company (Illinois Power), an existing customer of Applicant, for resale to Jones and Laughlin Steel Corporation for use in its plant located near the Village of Hennepin, Bureau County, Illinois. The sale and delivery is to commence December 1, 1967.[1]

The sale of the additional volumes will be made under Applicant's CD-1 Rate Schedule.

The application states that no additional facilities are required to make the proposed sale and delivery.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 2, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application in this pro-

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[1] Authorization of the subject volumes will increase Natural's obligations to Illinois Power to 74,000 Mcf per day under Rate Schedule CD-1.

ceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (e) and (f) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, authorizing the sale and delivery of an additional 15,000 Mcf of natural gas daily as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (e) and (f) of Section 157.20 of such Regulations.

(C) The sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by January, 1, 1968.

(D) Applicant and Illinois Power Company shall execute a superseding service agreement in accordance with the Commission's Regulations reflecting the increase in daily contract quantity and file the same with the Commission.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-314

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 6, 1967)

On January 17, 1967, Southern Natural Gas Company (Petitioner) filed in Docket No. CP64-314 a petition to amend the order of the Commission issued in said docket on June 8, 1966, authorizing the Petitioner, among other things to construct facilities to deliver firm third-year peak day volumes of 2,613 Mcf to Intercoastal Gas Corporation for distribution in the towns of Chatsworth, Ranger, Fairmont, Ellijay and East Ellijay, Georgia, all as more fully set forth in the said petition to amend.

Petitioner now requests the Commission to modify the certificate order issued to it in Docket No. CP64-314 (Opinion No. 498, issued June 8, 1966, 35 FPC 917) and substitute Atlanta Gas Light Company (Atlanta) for Intercoastal Gas Corporation as the resale customer which Southern was authorized to serve in that proceeding.

Atlanta has now purchased all of the assets of Intercoastal and has received approval of the Georgia Public Service Commission to construct and operate natural gas distribution systems in the communities previously authorized to be served by Intercoastal. Atlanta has also obtained franchises from the Georgia communities which previously granted such franchises to Intercoastal.

Due notice of the subject petition to amend has been given by publication in the Federal Register on January 31, 1967 (32 F.R. 1106). No protest, petition to intervene, or notice of intervention has been filed herein.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued June 8, 1966, in Docket No. CP64-314 be amended as hereinafter ordered.

*The Commission finds:*

(A) The Commission's order issued June 8, 1966, in Docket No. CP64-314 is amended so as to substitute Atlanta Gas Light Company (Atlanta) in lieu of Intercoastal Gas Corporation as the resale customer and distributor of natural gas in the towns of Chatsworth, Ranger, Fairmont, Ellijay and East Ellijay. Georgia.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65-49; UNITED FUEL GAS COMPANY, RP66-2; COLUMBIA GULF TRANSMISSION COMPANY, RP66-22

### ORDER MODIFYING ORDER CONDITIONALLY APPROVING RATE SETTLEMENT AND DENYING APPLICATIONS FOR REHEARING AND RECONSIDERATION

(Issued March 7, 1967)

On February 6, 1967, Atlantic Seaboard Corporation, United Fuel Gas Company, and Columbia Gulf Transmission Company (Respondents), filed a joint application for rehearing and reconsideration of our order issued January 26, 1967, 37 FPC 244, which conditionally approved a Stipulation and Agreement for the settlement of these proceedings. The Coal Interests[1] on February 23, 1967, filed an application for rehearing of that order, reasserting that they have a right to a hearing on the two issues (level of rates and lifting of boiler fuel sales limitations) and reiterating their intention not to stand in the way of any settlement of the older issues.

Respondents request that we eliminate the conditions imposed by paragraphs (C) and (F) relating, respectively, to (1) consolidated tax savings, and (2) retention or flow-through of gas supplier refunds which may in the future be refundable to Respondents. Respondents also request that we extend the time within which they are required to indicate acceptance or rejection of the order until 10 days after issuance of our order on this application for rehearing.

Respondents' application states that they agree that the consolidated tax savings issue should be reserved for our later determination after the United States Supreme Court has ruled in the *United Gas* case.[2] However, they seek reconsideration of our elimination of the 5 percent maximum tax savings contained in the settlement agreement to be reflected in the event, after the court decision in *United Gas*, the Commission eventually rules that consolidated tax savings must be reflected in the respondents' rates and charges. Upon reconsideration, we deem it appropriate to modify our order of January 26 to restore the 5 percent limit to the tax savings which may be reflected if the Commission in a further proceeding determines that consolidated tax savings should be reflected in Respondents' cost-of-service.

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[1] Fuels Research Council, Inc., National Coal Association and United Mine Workers of America.

[2] *United Gas Pipe Line Co. v. F.P.C.*, 357 F. 2d 230 (CA5-1966).

Paragraph (F) of the January 26 order provides for further proceedings with respect to any future supplier refunds the Respondents might claim they have a right to retain. It thus eliminates from the settlement a provision which would predetermine the issue and now "assure" Respondents the right to retain the contested refunds. Respondents contend that by that condition we have denied them the utilization of refund procedures similar to those previously allowed Texas Gas Transmission Corporation in Docket No. RP67-10 by our order issued November 8, 1966, 36 FPC 835.

The premise for this contention has not been established. The refund provision proposed by Respondents differs from that of the Texas Gas settlement. We have no objection to a refund provision which reads like the Texas Gas settlement. What we are unwilling to do is to go beyond the language in Texas Gas to prejudge the issue as to refunds from supplier increases which may become effective after November 1, 1966. It is the latter situation which Respondents seek to predetermine by the footnote at page 21 of the agreement, reading as follows:

> The purpose of this provision is to assure the flow-through of refunds to the persons who paid the costs giving rise to the refunds, and to *assure that United and Atlantic shall retain refunds relating to rate increases paid by them and* not passed on to the customers. [Italic supplied].

The refund retention rights sought to be assured by that footnote are contrary to the policy now firmly established by the Commission that a natural gas company must demonstrate that it is legally and equitably entitled to retain any refunds which it claims it should not flow-through to its jurisdictional customers.[3] The provisions of paragraph (F) of the January 26 order prescribe procedures for Respondents with respect to such refunds which are consistent with those prescribed for other natural gas companies. To grant Respondents preferential treatment on this issue, even though so provided in a proposed settlement and supported by some of its customers,[4] would be contrary to the public interest.

Coal Interests in their application for rehearing present no new facts or principles of law in support of their insistence upon their right to a hearing on the issues of level of rates and elimination of the boiler fuel clause. Their contentions previously advanced were fully dealt with in the January 26 order, and the findings and conclusions therein are in direct accord with the February 24, 1967 decision in *Fuels Research Council, Inc., et al.* v. *F.P.C.*, 374 F. 2d 842 (CA7-1967).

*The Commission finds:*

(1) The assignments of error and grounds for rehearing set forth in Respondents' application for rehearing filed February 6, 1967, present no new

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[3] See, *Texas Eastern Transmission Corp.*, Docket No. RP66-12, orders issued December 5, 1966, 36 FPC 959 and February 13, 1967, 37 FPC 306.

[4] Statements in support of Respondents' application for rehearing were filed by Baltimore Gas & Electric Co., Cincinnati Gas & Electric Co., Commonwealth Natural Gas Corp., Dayton Power & Light Co., and United Gas Improvement Co.

facts or principles of law which were not considered by the Commission when it issued its order on January 26, 1967, or which having now been considered warrant any change or modification of said order, other than as provided below.

(2) The assignments of error and grounds for rehearing set forth in Coal Interests' application for rehearing filed February 23, 1967, present no new facts or principles of law which were not considered by the Commission when it issued its order on January 26, 1967, or which having now been considered, warrant any change or modification of said order.

*The Commission orders:*

(A) Paragraph (C) of the order issued January 26, 1967, is modified to read as follows:

> (C) Article II, (C) of the proposed Stipulation and Agreement is modified insofar as it makes the final disposition of the treatment to be accorded consolidated tax savings dependent upon the decision of the Supreme Court in the pending *United Gas* case and that issue is fully reserved for independent decision in further proceedings to be instituted by subsequent order of the Commission after decision of the Supreme Court in the *United Gas* case, *provided*, however, that the maximum level of tax savings, if any, to be reflected in Respondents' cost-of-service as a result of the further proceedings in these dockets shall be limited to 5 percent as provided in the settlement agreement.

(B) The time specified in paragraph (D) of the order issued January 26, within which Respondents were directed to file a statement indicating their acceptance or rejection of the conditions imposed by that order, as modified by this order, is hereby extended to 10 days from the date of this order.

(C) The application for rehearing filed by the Respondents on February 6, 1967, to the extent not herein granted, is denied.

(D) The application for rehearing filed by Coal Interests on February 23, 1967, is denied.

Commissioner Ross *concurring* stated: In the light of the Court's decision in *Fuels Research Council, Inc., et al.* v. *F.P.C., supra*, I now join the majority in approving the settlement. While I believe, as does the Court, that the situation in which we consider the impact of coal prices on gas, but not vice versa, is anomalous; the matter does not seem open to question.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## THE MANUFACTURERS LIGHT AND HEAT COMPANY, ET AL., DOCKET NO. CP66–347, ET AL.

### ORDER DENYING PETITION FOR REVOCATION OF TEMPORARY CERTIFICATE TO CONSTRUCT

(Issued March 7, 1967)

On December 23, 1966 the County of Chester, *et al.*, interveners in this proceeding, filed a petition seeking revocation of a portion of the temporary certificate to construct facilities issued August 5, 1966 to The Manufacturers Light and Heat Company (Manufacturers). The portion of the authorization sought to be revoked relates to facilities proposed in the counties of Lancaster and Chester, Pennsylvania lying east of the Borough of New Holland. On January 6, 1967, Manufacturers filed an answer to the petition.

The August 5, 1966 temporary certificate permitted the construction of the facilities proposed in this docket but specifically prohibited the operation of such facilities without further authority from the Commission. By letter-order issued December 15, 1966, we authorized Manufacturers to operate a segment of the proposed facilities in this docket, but denied Manufacturers' request to operate the balance of the requested facilities upon finding that no emergency exists within the meaning of Section 7 of the Natural Gas Act with respect to the operation of those facilities. In this regard we noted:

> Apparently these facilities have already been constructed and Manufacturers is reminded that none of these facilities should be included in its rate base. If after hearing it is shown that these facilities are not and were not required by the public convenience and necessity, the Commission will then determine whether the facilities should not only be excluded from Manufacturers' rate base but also whether they should be removed and, insofar as possible, the right of way restored to its original condition.

The petition relates to a segment of the facilities which we have not permitted to be operated, and contends that the finding that "apparently these facilities have already been constructed" is incorrect. It alleges that there is still extensive work to be done on the portion of the facilities in question, *i.e.*, that some trenching remains to be done and that "there are thousands of feet of pipe to be welded, inspected, laid, covered and the land to be graded." It alleges further that almost all of the trench which has been excavated has filled with water and has frozen and that further construction will necessitate the retrenching of these lands, the breaking of ice, and probably additional blasting. These claims have been denied by Manufacturers which answers that work on the segment in question has been virtually completed. Manufacturers claims that all clearing and digging operations have been completed, that all pipe has been strung, and that welding was completed as of December 23, 1966, the date of the instant petition to within 5.4 miles of completion. Manufacturers also flatly denies that retrenching of lands, breaking of ice and additional blasting are necessary.

It appears that the construction in question was nearly completed as of the time of our letter-order. Little useful purpose would be served by the cessation of Manufacturers' construction activities at this time. Since all clearing and digging operations have been completed the remaining construction work will not significantly increase any damage to the land on which the construction is taking place. On the contrary, suspension of construction at this late stage could very well cause more problems for the public at large as well as Manufacturers than its completion. The hearings in this proceeding are the appropriate place to explore all questions which have been raised in the petition.

*The Commission orders:*

The "Petition by the County of Chester, The Township of Honey Brook, The Township of West Nantmeal, The Lan-Chester Land Owners Association, Florence M. Keay, Noah S. Myers and Barbara Myers, his wife, For Revocation of the Temporary Construction Certificate Issued August 5, 1966 as to that Portion of Applicant's Facilities Proposed to be Located East of New Holland, Lancaster County, Pennsylvania and Request for Immediate Action" filed on December 23, 1966 in this proceeding is denied.

Commissioner Ross *dissenting* for the reasons stated in his partial dissent to the temporary certificate issued December 15, 1966.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## ANNUAL REPORTS OF MUNICIPAL ELECTRIC UTILITIES—F.P.C. FORM NO. 1-M, DOCKET NO. R-310

## ORDER NO. 338

### PRESCRIBING REVISED SCHEDULES

(Issued March 7, 1967)*

On November 15, 1966, the Commission issued a notice of proposed rulemaking in this proceeding (31 F.R. 14786, November 22, 1966), proposing to revise annual report F.P.C. Form No. 1-M, effective for reporting year 1967 and thereafter. Only two comments were received in response to the notice.[1] Both were favorable. The amendments made by this order are the same as proposed in the notice: substitution of certain schedules from Form No. 1 in Form No. 1-M, conforming editorial changes, and the requirement of an additional copy for use in the Commission's regional offices.

These revisions will place operating data of municipal systems on a reporting basis uniform with those of privately owned systems, thus supplying the Commission and the interested public with a more complete and useful body of information. In view of the large number of Form 1-M users who will use the "small plant" schedules (requiring only a one-line entry per plant and the fact that some others already use Form 1 schedules under the permissive proviso in § 141.7(a), the Commission believes that the amendment will not result in any reporting burden not commensurate with the benefits it will produce.

*The Commission finds:*

The amendments to the annual report F.P.C. Form No. 1-M and to the regulations here ordered are necessary and appropriate for the administration of the Federal Power Act.

*The Commission*, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 309 and 311 thereof (49 Stat. 858, 859; 16 U.S.C. 825h, 825j), *orders:*

(A) Section 141.7, Subchapter D. Chapter I, Title 18 of the Code of Federal Regulations, is amended to read as follows:

§ 141.7 Form 1-M, Annual Report for municipal electric utilities having annual electric operating revenues of $250,000 or more.

(a) The form of Annual Report for municipal electric utilities having annual electric operating revenues of $250,000 or more, designated herein as F.P.C. Form No. 1-M, is prescribed for the calendar year beginning January 1, 1967, or for a year beginning or ending during the calendar year 1967 if an established fiscal year is other than a calendar year commencing January 1, and years thereafter: *Provided, however*, That any municipality owning or operating an electric utility system having annual electric operating revenues of $250,000 or more may, at its election, submit in lieu of F.P.C. Form No. 1-M, a report on F.P.C. Form No. 1 together with the schedule, Taxes, Tax Equivalents, Contributions and Services During Year, from F.P.C. Form No. 1-M.

(b) Each "municipality" as defined in section 3 of the Federal Power Act (city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power) which is engaged in generation, transmission, distribution or sale of electric energy, however produced, throughout the United States and its possessions, having annual electric operating revenues of $250,000 or more, whether or not the jurisdiction of the Commission is otherwise involved, shall prepare and file with the Commission for the calendar year beginning January 1, 1967, or for a year beginning or ending during the calendar year 1967 if its established fiscal year is other than a calendar year commencing January 1, and for each year thereafter, on or before the last day of the third month following the close of the calendar year or other established fiscal year, an original and three conformed copies all properly filled out and attested. One copy of the report should be retained by the respondent in its files. The conformed copies may be carbon copies.

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*Published in the Federal Register on March 15, 1967 (32 F.R. 4058).

[1] American Public Power Association and Kansas State Corporation Commission.

(c) This Annual Report contains the following schedules:

Identification
General Instructions
Excerpts From the Law
General Information
Balance Sheet
Condensed Income Statement
Earned Surplus
Electric Sales Data for the Year
Sales of Electricity for Resale
Operation and Maintenance Expenses
Purchased Power
Utility Plant
Accumulated Provisions for Depreciation of Utility Plant
Long-Term Debt
Taxes, Tax Equivalents, Contributions and Services During Year
Steam-Electric Generating Plant Statistics (Large Plants)
Hydroelectric Generating Plant Statistics (Large Plants)
Generating Plant Statistics (Small Plants)
Changes Made or Scheduled to Be Made in Generating Plant Capacities
Steam-Electric Generating Plants
Hydroelectric Generating Plants
Internal-Combustion Engine and Gas-Turbine Generating Plants
Transmission Line Statistics
Transmission Lines Added During the Year
Electric Energy Account
Expenditures for Certain Civic, Political and Related Activities
Attestation.

(B) The Annual Report for Municipal Electric Utilities, F.P.C. Form No. 1-M, prescribed by § 141.7, Subchapter D., Chapter I, Title 18 of the Code of Federal Regulations is amended, effective for a reporting year ending during calendar year 1967, by revising page 1, deleting pages 8 through 12 and in lieu thereof inserting new pages 8 through 20, and adding a new page 23, all as set out in the Attachment hereto.*

(C) The amendments prescribed herein shall be effective upon the issuance of this order.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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*Omitted in printing.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CONTINENTAL OIL COMPANY, DOCKET NO. RI64-395

### ORDER ACCEPTING CONTRACT AGREEMENT AND ACCEPTING DECREASED RATE FILING SUBJECT TO REFUND

(Issued March 8, 1967)

On November 18, 1963, Continental Oil Company (Continental) filed with the Commission a proposed change in rate, from 13.2295¢ to 14.2486¢ per Mcf, designated as Supplement No. 3 to Continental's FPC Gas Rate Schedule No. 198, which pertains to its jurisdictional sales of natural gas from the Northeast Haynes Area, Rio Arriba County, New Mexico (San Juan Basin Area) to El Paso Natural Gas Company (El Paso). The Commission by order issued December 19, 1963, suspended Continental's proposed rate increase and deferred the use thereof for five months until June 1, 1964. The suspension period was subsequently shortened to May 18, 1964 by the Commission's order issued herein on the same date and the suspended rate was permitted to become effective subject to refund upon the filing by Continental of its agreement and undertaking. A satisfactory agreement and undertaking was filed by Continental on May 25, 1964, pursuant to said order.

On February 6, 1967, Continental submitted a letter agreement dated September 16, 1966, which provides for connection of certain wells to buyer's low pressure system which are incapable of meeting the high pressure requirements of the contract, with a corresponding 1.0¢ per Mcf reduction in price. The letter agreement also deletes the 1.0¢ per Mcf minimum guarantee for liquids and "favored-nation" provisions of the contract insofar as they pertain to the low pressure gas. Such agreement has been designated as Supplement No. 4 to Continental's FPC Gas Rate Schedule No. 198. We believe that it would be in the public interest to accept for filing Continental's aforementioned contract amendment to become effective on February 6, 1967, the proposed effective date, but not the proposed rate contained therein for the reason set forth below.

Concurrently with the filing of its contract agreement, Continental filed a renegotiated rate reduction from 14.2486¢[1] to 12.2295¢[2] per Mcf, amounting to an annual decrease of $2,579 over the previously suspended rate, pertaining to the low pressure gas only, to reflect the rate reduction pursuant to the aforementioned letter agreement. The present 14.2486¢ per Mcf rate in effect subject to refund. Such rate exceeds the area increased rate ceiling by the 1.0¢ minimum guarantee for liquids and partial reimbursement for the full 2.55% New Mexico Emergency School Tax, which was protested by the purchaser, El Paso. Continental requests waiver of the statutory notice so that its reduced rate filing may become effective upon the date of filing. Even though the proposed reduction rate does not exceed the area increased rate ceiling of 13.0¢ per Mcf for the Permian Basin Area as announced in the Commission's Statement of General Policy No. 61-1, as amended, it still includes partial reimbursement for the full 2.55% New Mexico School Tax which was protested by

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[1] Includes 1.0¢ per Mcf minimum guarantee for liquids and partial reimbursement for the full 2.55% New Mexico Emergency School Tax.

[2] Includes partial reimbursement for the full 2.55% New Mexico Emergency School Tax.

El Paso. In this situation, we conclude that Continental's proposed reduced rate should be accepted for filing and permitted to become effective as of February 6, 1967, the proposed effective date, subject to refund in the existing rate proceeding in Docket No. RI64–395, pending determination of the contract tax question.

The proposed rate may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

*The Commission orders:*

(A) The 12.2295¢ per Mcf contained in Supplement No. 5 to Continental's FPC Gas Rate Schedule No. 198, which supersedes the 14.2486¢ per Mcf rate provided in Supplement No. 3 to Continental's FPC Gas Rate Schedule No. 198, is allowed to become effective as of February 6, 1967, the proposed effective date, subject to refund in the rate suspension proceeding in Docket No. RI64–395.

(B) Continental's Letter Agreement dated September 16, 1966, designated as Supplement No. 4 to Continental's FPC Gas Rate Schedule No. 198, is accepted for filing as a contract amendment but not as a notice of change in rate. Such contract amendment is permitted to become effective as of February 6, 1967, the proposed effective date.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MICHIGAN GAS AND ELECTRIC COMPANY, DOCKET NO. E–7222

### ORDER ALLOWING SUPPLEMENTAL RATE SCHEDULE TO TAKE EFFECT, AND DENYING MOTIONS FOR APPROVAL OF SETTLEMENT, TERMINATION OF PROCEEDING, AND REJECTION UNDER SECTION 1.15 (F) OF THE COMMISSION'S REGULATIONS

(Issued March 9, 1967)

On May 4, 1965, 33 FPC 954, the Commission instituted an investigation on its own motion, under Section 206(a) of the Federal Power Act, of the lawfulness of the rates of Michigan Gas and Electric Company (MGE) for sale of electricity to the Village of Paw Paw and the City of Dowagiac, Michigan. The hearing has been held, briefs have been filed and the matter is before the Presiding Examiner for decision.

On January 9, 1967, MGE filed a document entitled "Offer of Settlement and Motion for Certification of Record, Approval of Offer of Settlement and Termination of Proceeding." At the same time it offered for filing a supplement to its current rate schedule which it stated would result in an annual saving to Paw Paw of over $22,000 effective November 25, 1966, based on estimated sales within 12 months after that date. Staff contends that the savings should be computed at $16,800, based on figures from the test year of 1964.

Staff's response, filed January 19, 1967 points out that the new rate schedule is filed unconditionally and not as an offer of settlement. MGE's rejoiner of February 2, 1967 concedes this to be so (page 5): "Apparently, it is Staff counsel's position that there is no reason to terminate the proceeding because the Commission can have the reduction, since it was not contingent, and can continue the rate proceeding, too. Obviously, the Commission can follow such a course, but the question is whether the public interest warrants that kind of an approach."

Staff contends that the rates to Paw Paw result in excess revenues of $40,534 annually. Staff further contends that no rate case expense should be allowed MGE under the circumstances and that the disallowances of such expense would raise the excess revenues to over $43,900. Staff also objects to a provision of MGE's rate schedule which obligates Paw Paw to buy all of its requirements from MGE except that generated from Paw Paw at its present water power plant or any additional improvements thereon. Staff contends that this provision is unduly restrictive and that Paw Paw should be allowed to install thermo-generation as well.

Staff objects as well to certain provisions in the Dowagiac rate schedule. The first would make it impossible for Dowagiac to serve a new large industrial customer without notice to and consent by MGE. Another is a purchased power adjustment clause which staff contends is inequitable because it requires upward adjustment of rates if purchased power costs go up but no downward adjustment if such costs decline. Another is a restrictive monthly billing determination forcing Dowagiac to purchase, or pay for, about 56 percent of its load growth requirements from MGE.

On February 2, 1967 MGE filed a motion to reject the staff response. Therein it stated that it would not object to modifications of the various provisions in the Paw Paw and Dowagiac agreements objected to by staff. MGE has no objection to the Commission's order terminating the proceeding also providing that Paw Paw may install thermo-generation. MGE is agreeable (1) to eliminating the provision making it impossible for Dowagiac to serve a large new industrial customer without notice to and consent by MGE, (2) to providing for downward rate adjustment if the costs of purchased power decline, and (3) to limiting the application of its billing demand provision to not less than 75% of the highest previous demand supplied by MGE. As to the last provision, MGE states that staff's "objection is based on the erroneous premise * * * that MGE does not furnish standby service to Dowagiac." (page 8)

Dowagiac has not appeared. Paw Paw, while not formally appearing, made its views known in a telegram and a letter from its village attorneys. Paw Paw opposes the termination of the proceedings and is not satisfied with the filed rate reduction except on an intermediate basis. On page 3 of the letter on behalf of Paw Paw it is stated "* * * the Village agreed to accept the offer of Michigan Gas and Electric Company provided the rate reduction took effect December 1, 1966, or before, and PROVIDED Michigan Gas and Electric understood that the Village was in no way agreeing that the rate reduction was satisfactory on a long term basis and that the agreement with Michigan Gas and Electric Company was not to affect the hearing before the Federal Power Commission Docket No. E-7222." The letter on behalf of Paw Paw further stated that Paw Paw had been overcharged for years but that MGE refused to reduce rates until Paw Paw obtained an offer from another utility to supply power at lower rates. MGE concedes that the reduction was made to meet competition.

From these papers it does not appear that the so-called "Offer of Settlement" was in fact an offer of settlement at all. It proposed no change in the rate schedule provisions objected to by staff. The proposed rate reduction was filed unconditionally. Paw Paw's counsel states there was an express understanding that the reduction would not affect this proceeding. There was no *quid pro quo* offered for termination of the proceedings and no compromise of the remaining differences. The so-called "Offer of Settlement" appears essentially to be a motion to terminate the proceedings on the ground that the issues and amounts remaining in dispute are not important enough to justify the burden of continuing the proceeding.

MGE's last filing does offer some *quid pro quo*. We do not have a communication from staff or from Paw Paw as to whether the concessions proposed for the first time in that filing might be acceptable to either as a basis for settlement. In particular, we have not been told whether the proposed 75% clause with respect to Dowagiac's billing demand would be considered satisfactory. In view of the emphasis placed by Paw Paw and the staff upon additional rate reduction, it would appear that the concessions offered in MGE's rejoinder would satisfy neither Paw Paw nor the staff. There would remain in issue, if the new filed rate is put into effect, up to an additional $27,000 in annual rates.

In the present state of the proceeding, MGE's motion for termination should not be granted. The new rate filing, unconditionally tendered, should now be accepted retroactive to November 25, 1966.

In its motion filed February 2, 1967, MGE contends that the words "rapacity" and "bad management" on page 9 of the staff response comes within the purview of Section 1.15(f) of the Commission's Rules. The language complained of is neither scurrilous nor defamatory within the meaning of Section 1.15(f), and the motion is denied. At the same time, the Commission would note that it does not endorse the use of such terms by counsel either for staff or any other party.

*The Commission further finds:*

(1) It is necessary and appropriate for the purposes of the Federal Power Act, and the rules and regulations promulgated thereunder, that MGE's "OFFER OF SETTLEMENT AND MOTION FOR CERTIFICATION OF RECORD, APPROVAL OF OFFER OF SETTLEMENT AND TERMINATION OF PROCEEDING" filed on January 9, 1967, and MGE's "MOTION UNDER SECTION 1.15(f) OF THE COMMISSION RULES OF PRACTICE AND PROCEDURE TO REJECT 'STAFF RESPONSE * * *'" filed on February 2, 1967, be denied.

(2) Good cause has been shown for waiver of the 30-day notice period provided in Section 205(d) of the Federal Power Act with respect to Supplement No. 2 to Michigan Gas and Electric Company's Rate Schedule FPC No. 2, and the rate schedule supplement should be allowed to take effect as of November 25, 1966.

*The Commission orders:*

(A) MGE's offer and motions described in finding (1) above are hereby denied.

(B) The 30-day notice period provided in Section 205(d) of the Federal Power Act is hereby waived with respect to the proffered rate schedule supplement and it is hereby allowed to take effect as of November 25, 1966.

(C) The issuance of this order shall constitute full notice of the filing and publication of the rate schedule supplement in question insofar as the effective date is concerned.

(D) Nothing contained in this order shall be construed as a waiver in any other respect of the requirements of Section 205(d) of the Federal Power Act or Section 35.3 of the Commission's Regulations under the Federal Power Act; nor shall it be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate provided for in the rate schedule supplement as above designated, nor shall this order be deemed as recognition of any claim, contractual right or obligation affecting or relating to such service or rate.

(E) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending (including Docket No. E-7222), or any proceeding hereafter instituted by or against MGE, its successors and assigns.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNION CARBIDE CORPORATION, PROJECT NOS. 1856 AND 2512

### ORDER ISSUING LICENSE FOR MAJOR PROJECT NO. 2512 AND PERMITTING WITHDRAWAL OF APPLICATION FOR PROJECT NO. 1856

(Issued March 9, 1967)

Application was filed on April 7, 1965, and supplemented on March 16, 1966, by Union Carbide Corporation (Applicant) of New York, New York, for a license under Section 4(e) of the Federal Power Act (Act) for the constructed Hawks Nest and Glen Ferris developments, designated as Project No. 2512. The Hawks Nest development (formerly designated as Project No. 1856) is located on the New River in the vicinity of the Town of Gauley Bridge, and the Glen Ferris development is located on the Kanawha River at the Town of Glen Ferris, both developments being within Fayette County, West Virginia. No lands of the United States are affected by the project.

The application for license was filed pursuant to the Commission's Opinion No. 442 and order issued September 15, 1964 (32 FPC 770) as amended by order issued November 12, 1964 (32 FPC 1298).

Construction of the Hawks Nest development was commenced in 1930. Partial operation of the power station was begun on July 9, 1936, and full operation commenced on January 21, 1937. Various alterations to the development, both substantial and minor, were made prior to April 1, 1960. The Glen Ferris development was put into operation in January, 1901. Various alterations to the development, both substantial and minor, were made through August, 1964.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to the provisions of Section 4(e) of the Act. However, it was pointed out that Applicant's project could affect adversely intended benefits from the Corps' constructed or partly constructed upstream projects on the New and Gauley Rivers by temporary retention of flows from the upstream projects for downstream water quality purposes, and a special license condition was recommended to assure such water quality, set forth herein as Article 33.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project conditions in the interests of fish and wildlife and recreation set forth in attached Form L-3, and a special condition requiring the release from the project of a minimum flow for the conservation and maintenance of fishery resources included herein as Article 35.

The Department of Health, Education, and Welfare has advised that the project does not presently have any significant adverse effects on water supply or water quality, and none is expected.

The State of West Virginia, Department of Natural Resources has advised that the project recreational facilities proposed in the application for license (Exhibit R) are justified and needed.

Filed as part of the application for license was an Exhibit R consisting of two pages of text. This was supplemented by the filing on March 16, 1966 of two drawings (FPC Nos. 2512–42 and –43) and a proposed form of lease to the State of land within the Hawks Nest development for public recreational development in connection with the enlargement of an adjacent State park known as "Hawks Nest State Park." The reservoirs and tailwater areas of both the Hawks Nest and Glen Ferris developments are open to the public and access is adequate for fisherman use and other public recreational activities. Precipitous banks, railroad tracks, and proposed State highway use, limit future additional recreational development for the Glen Ferris area. Future plans for recreational development of land within the Hawks Nest development would involve a lease to the State of West Virginia for the location by the State of family-type picnic areas, fishing trails, camp sites, access roads, boat launching sites, a scenic overlook and landscaping. By letter dated January 20, 1967, we advised Union Carbide Corporation that the Commission interposes no objection to the grant of lease to the State of West Virginia of the lands involved within the boundary of the Hawks Nest development, subject to the rights and responsibilities of Union Carbide Corporation and its successors and assigns in Project No. 2512, and the inclusion of a covenant or condition ensuring that the use of such lands will not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use in accordance with paragraph (C) of the Commission's Order No. 313 issued December 27, 1965, 34 FPC 1546 (18 CFR 2.7 (C)).

The project area submitted by Applicant appears to exceed the area limits for project reservoirs imposed by Section 4.41 Exhibit K(1) (iii) of the Commission's Regulations, as amended by Commission Order No. 314, issued December 27, 1965, 34 FPC 1550, to permit the inclusion of additional lands for recreational uses. We are by Article 36, requiring Applicant, among other things, to file a revised Exhibit K in conformance with the Commission's Regulations so as to remove from the project area all excessive lands.

Our records show that on May 19, 1941, Electro Metallurgical Corporation, a subsidiary of Applicant herein, filed an application for license for the Hawks Nest development only, which was designated as Project No. 1856. While a license for that project was tendered for acceptance, the license was not accepted, and a notice of withdrawal of application for the license was filed on May 18, 1950. Thereafter, the Commission instituted an investigation with respect to the Hawks Nest and the Glen Ferris developments and Applicant was required to file an application for license for both of these developments (32 FPC 770, 776). In the circumstances, we are herein permitting withdrawal of the application for Project No. 1856 and terminating that proceeding.

For the reasons set forth in the Commission's opinion *Metropolitan Edison Company*, 6 FPC 189 (1947), and in *Public Service Company of New Hampshire*, 27 FPC 830 (1962), we are granting this license for a period of 50 years, effective as of January 1, 1938 and terminating December 31, 1987.

Annual charges in the amount of $91,948.52 have been paid in connection with the Hawks Nest Project No. 1856, and have been deposited in the U.S. Treasury. We are providing that this sum be credited against the annual charges to be assessed in this license for Hawks Nest and Glen Ferris, commencing January 1, 1938 (the effective date of this license) and in accordance with the formula prescribed in § 11.20(a) of the Commission's Regulations under the Federal Power Act (18 CFR § 11.20(a)). The $91,948.52 will be credited to the bill for annual charges rendered for Project No. 2512 beginning with January 1, 1938, the effective date of this license. For the years from such effective date through December 31, 1963, the annual charge will consist of administrative charges to be computed on the basis of one cent per horsepower of authorized capacity of the project plus 2½ cents per 1,000 kwh of project generation for the year; for the years beginning with January 1, 1964, the annual charges will be assessed on the basis of administrative charges to be computed in accordance with Section 11.20 of the Commission's Regulations under the Federal Power Act (18 CFR 11.20).

*The Commission finds:*

(1) Applicant is a corporation organized under the laws of the State of New York, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 143,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(6) Exhibit R, consisting of two pages of text, filed April 7, 1965, and the two drawings (FPC Nos. 2512-42 and -43) filed March 16, 1966, conform to the Commission's rules and regulations and should be approved as part of this license.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license to the extent therein indicated.

(8) It is consistent with the provisions of the Federal Power Act and the Commission's rules and regulations thereunder to permit withdrawal of the application for license for Hawks Nest Development (Project No. 1856).

*The Commission orders:*

(A) This license is hereby issued to Union Carbide Corporation (Licensee) of New York, New York, under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of January 1, 1938, and terminating December 31, 1987, for the continued operation and maintenance of Project No. 2512, located on the New and Kanawha Rivers, navigable waters of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2512 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the Licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

Exhibit J (FPC No. 2512-4).

Exhibit K (FPC Nos. 2512-5, -6 and -29), insofar as it shows the project works location, but not the project boundary.

(ii) project works as follows: *Hawks Nest Development*—A dam with an overall length of 948 feet containing a main spillway section, a trash spillway, and abutment structures; a main ogee spillway containing 14 crest gates 25 feet high and 50 feet wide; a reservoir about 570 feet wide and 3.65 miles long operated between elevations 820 and 815 feet; a gated intake; a circular tunnel 16,240 feet long leading to an intermediate surge tank, a steel differential surge tank, and a penstock system; a powerhouse containing four turbines, with a total capacity of 140,000 hp directly connected to four generators, with a total capacity of 102,000 kw; and appurtenant facilities; and *Glen Ferris Development*—a concrete dam from 3 to 12 feet high and approximately 2,850 feet long containing a wooden stop-log section, three wooden removable trash spillway stop-log sections, and two wooden stop-log sluices in the base of the dam; a reservoir of approximately 397 acres; a trash boom 910 feet long; two intakes; two open flumes; an "old" west powerhouse equipped with six turbines connected to six generators and a "new" east powerhouse equipped with two turbines connected to two generators (both powerhouses having a combined capacity of 5,450 kw); a substation; and appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license which are designated and described as follows:

*Exhibit L*

HAWKS NEST DEVELOPMENT

| Sheet No. | FPC No. 2512- | Title |
|---|---|---|
| (1)c | 9 | Dam—general plan and downstream elevation. |
| (1)d | 10 | Dam—upstream elevation and section. |
| (3)a | 13 | Tunnel intake—masonary details—sectional plan. |
| (3)b | 14 | Tunnel intake—masonary details—sectional elevation. |
| (3)d | 16 | Tunnel—location and sections. |
| (3)g | 19 | Surge tank and tunnel connection—plan and elevation. |
| (3)i | 21 | Manifold and penstocks—steel and concrete casing. |
| (4)b | 24 | Powerhouse—cross section. |
| (4)c | 25 | Powerhouse—longitudinal section on and of units. |

GLEN FERRIS DEVELOPMENT

| | | |
|---|---|---|
| (1)a-GF | 30 | Concrete dam. |
| (1)b-GF | 31 | Dam—sluiceways in replacement dam. |
| (2)a-GF | 36 | Powerhouse—longitudinal—cross section. |
| (2)b-GF | 37 | Powerhouse—elevation and plan sections. |

Exhibit M: consisting of 11 typewritten pages entitled, "General Description and General Specifications of Mechanical, Electrical, and Transmission Equipment and their Appurtenances," filed in the Commission April 7, 1965, except for outdoor switchyard, Item 4(G), at Hawks Nest Development, and frequency converter unit, Item 2(E), at Glen Ferris Development.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is subject also to the terms and conditions of Form L-3 (Revised September 1, 1966), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (36 FPC 971), which terms and conditions, designated as Articles 1 through 31, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

*Article 32.* The Licensee shall pay to the United States the following annual charge, effective January 1, 1938:

> For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 143,000 horsepower.

*Article 33.* The operations of the licensee, so far as they affect the use, storage and discharge of releases from existing or future upstream projects for water quality control, shall be controlled at all times by such reasonable rules and regulations in the interest of maintaining these water quality releases for the purposes intended, as may be prescribed by the Commission upon its own motion or recommendation of the Secretary of the Army after notice and opportunity for hearing and upon findings based on substantial evidence that such rules and regulations are necessary and desirable, reasonably consistent with the primary purpose of the project and consistent with provisions of the Act.

*Article 34.* The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project works.

*Article 35.* The licensee shall, for the conservation and maintenance of fishery resources, maintain a minimum flow of not less than 25 cfs in the New River between the Hawks Nest Dam and the tailrace of the Hawks Nest Powerhouse.

*Article 36.* Licensee shall file for Commission approval a revised Exhibit J (to include the location of Glen Ferris development) and a revised Exhibit K within one year from the date of issuance of this license in conformance with the Commission's regulations. Special attention shall be given to Sections 4.41K(1)(i) or 4.41K(1)(v), and 4.41K(1)(iii) as amended, of the Regulations under the Federal Power Act.

(D) The Exhibit R filings described in finding (6) above are hereby approved as part of this license.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license to the extent indicated therein.

(F) Electro Metallurgical Corporation is hereby permitted to withdraw its application for Project No. 1856, and the proceeding initiated by the filing of the application is terminated.

(G) The Licensee shall within 90 days from the date of issuance of this license, file in accordance with the provisions of Section 11.20(a)(4) a statement under oath showing the gross amount of power generation for the project in kilowatt-hours for each calendar year commencing January 1, 1938.

(H) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITIES SERVICE GAS COMPANY, DOCKET NO. CP67-150

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 10, 1967)

On November 25, 1966, Cities Service Gas Company (Applicant) filed in Docket No. CP67-150, as supplemented on January 13, 1967, an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, acquisition and operation of certain natural gas facilities necessary for the delivery of natural gas, on an interruptible basis, to two generating plants of Kansas Gas and Electric Company (KG&E) and for permission and approval to abandon certain other natural gas facilities, all as more fully set forth in the application, as supplemented, in this proceeding. The proposed projects are near Wichita, Sedgwick County, Kansas.

In order to deliver natural gas to KG&E's Gordon Evans Power Plant, Applicant proposes: (a) to acquire from Kansas Gas Supply Corporation and operate approximately 10.39 miles of 16-inch pipeline and related appurtenances at a depreciated original cost of approximately $359,389, (b) to construct and operate 2.25 miles of 16-inch pipeline, together with related appurtenances at an estimated cost of $100,000 and (c) to install gas cleaning, measuring and regulating facilities at a total estimated cost of $104,000. Applicant is authorized to serve KG&E's Murray Gill Power Plant; however, Applicant proposes herein to construct and operate 0.79 miles of 12-inch line replacing an equal length of 8-inch line presently used to serve the Gill Plant. Applicant also requests authorization to abandon the 8-inch line. The estimated cost of the proposed 12-inch line is $35,000.

The total estimated aggregate cost of the subject proposals will be financed out of treasury funds.

In Docket No. G-1760, Applicant was authorized to deliver, on an interruptible basis, a total of 13.7 billion cubic feet of gas annually to KG&E at the latter's Gill Plant. By the subject application, Applicant does not request authorization to increase the 13.7 billion cubic feet authorization, but it does request authority to deliver a portion of the authorized annual volumes to the Gordon Evans Plant, as well as to the Gill Plant. The proposed facilities will enable Applicant to deliver to the Evans Plant and the Gill Plant up to 100,000 Mcf and 90,000 Mcf of natural gas per day, respectively.

On December 27, 1966, the Kansas State Corporation Commission filed a notice of intervention in this proceeding; however, on January 9, 1967, said notice was withdrawn.

After due notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction, acquisition and operation of the subject facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued should be conditioned upon the exclusion from consideration in any future matter concerning rates, the investment and costs associated with the proposed acquisition and the proposed construction of the 2.25 miles of 16-inch line. To effectuate this condition, Applicant should be required to set up sub-accounts in the appropriate plant and expense accounts prescribed by the Uniform System of Accounts.

(7) Aggregate total deliveries to the Gordon Evans Plant and the Murray Gill Plant should not exceed 13.7 billion cubic feet of gas annually.

(8) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(9) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Cities Service Gas Company, to construct, acquire and operate the subject facilities and to transport and deliver natural gas, on an interruptible basis, to KG&E's Gordon Evans Power Plant as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The subject facilities shall be constructed, acquired and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission Regulations under the Natural Gas Act, by June 1, 1967.

(D) The certificate issued in paragraph (A) above is conditioned upon the exclusion from consideration in any future matter concerning rates, the investment and costs associated with the authorized acquisition and the authorized construction of the 2.25 miles of 16-inch line. To effectuate this condition, Applicant is required to set up sub-accounts in the appropriate plant and expense accounts prescribed by the Uniform System of Accounts.

(E) Aggregate total deliveries to the Gordon Evans Plant and the Murray Gill Plant shall not exceed 13.7 billion cubic feet of gas annually.

(F) The certificate issued is granted on the express condition that the interruptible service authorized shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(G) Permission for and approval of the abandonment by Applicant of facilities hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, are granted.

(H) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TOWN OF LENOX, IOWA AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP67-189

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 10, 1967)

On December 29, 1966, the City of Lenox, Iowa (Applicant) filed in Docket No. CP67-189 an application and a supplement thereto on February 9, 1967, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Respondent) to establish physical connection of its facilities with the facilities of Applicant and to sell and deliver to Applicant volumes of natural gas for resale, all as more fully set forth in the application and supplement thereto.

Applicant requests that Respondent be ordered to establish physical connection of its natural gas transmission facilities with the facilities to be constructed by Applicant and to sell and deliver to Applicant up to 2,055 Mcf of natural gas for resale and distribution in Lenox, Clearfield, and Bedford, in Taylor County and Prescott in Adams County, Iowa.

The four communities are all municipalities. To avoid duplication of facilities, the four communities propose to construct and operate the following laterals and their own respective distribution systems:

Lenox Line—19 miles of 4-inch lateral extending southwardly from a point on Natural's main transmission line and passing by the Town of Prescott to the Town of Lenox. This lateral, which will transport all the gas requirements of the four communities, will be owned and operated by Lenox.

Bedford Line—17 miles of 3-inch lateral extending from the terminus of the Lenox Line to the city-gate of Bedford. This line will be owned and operated by Bedford.

Clearfield Line—7 miles of 2-inch lateral extending from the terminus of the Lenox Line to the city-gate of Clearfield. This line will be owned and operated by Clearfield.

Total estimated cost of Applicant and associated communities proposed construction, including transmission facilities and distribution system are as follows:

| | |
|---|---|
| Lenox: | |
| Transmission line | $183,000 |
| Distribution | 141,000 |
| Other costs | 136,000 |
| Total | 460,000 |
| Prescott: Distribution | 61,000 |
| Bedford: | |
| Transmission line | 151,000 |
| Distribution | 193,000 |
| Other costs | 146,000 |
| Total | 490,000 |
| Clearfield: | |
| Transmission line | 40,000 |
| Distribution | 49,000 |
| Other costs | 35,000 |
| Total | 124,000 |

Each of the communities will finance its project by means of 30-year natural gas revenue bonds bearing an interest rate of 5.5 percent.

The estimated third year peak-day and annual requirements for Applicant and associated communities are as follows:

| | Lenox | Prescott | Clearfield | Bedford | Total |
|---|---|---|---|---|---|
| Third year peak-day (Mcf) | 632 | 184 | 228 | 1,011 | 2,065 |
| Third year annual (Mcf) | 78,672 | 20,331 | 29,390 | 118,484 | 246,877 |

On January 19, 1967, Respondent filed an answer to the application in the proceeding stating it would be able and willing to establish a single connection to render the requested service under a single service agreement. The Town Councils of Lenox and of Prescott voted their approval for the proposed natural gas service on November 24, 1965. The City Council of Bedford and

Town Council of Clearfield voted their approval on November 13, 1965. No state authorization is required.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by the publication in the Federal Register on January 18, 1967 (32 F.R. 586). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

*The Commission finds:*

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 7, 1958, in Docket No. G-9666 (20 FPC 694).

(2) Applicant and associated communities are legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations up to 2,055 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in Lenox, Prescott, Clearfield and Bedford and environs, within one year from the date of the issuance of this order.

*The Commission orders:*

(A) Natural Gas Pipeline Company of America, Respondent, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 2,055 Mcf (measured at 14.73 psia) of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E-7335

### ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued March 10, 1967)

Northern States Power Company (Applicant), an electric utility incorporated under the laws of Minnesota and qualified to do business in the States of

North Dakota and South Dakota as a foreign corporation, with its principal business office at Minneapolis, Minnesota, filed an application on January 26, 1967 with the Federal Power Commission seeking an order pursuant to Section 204 of the Federal Power Act authorizing it to issue Promissory Notes in amounts not exceeding an aggregate of $50,000,000 at any one time.

The Notes which will be issued to commercial banks on various days and for various periods of time will mature not more than 12 months after date of issue and the maturity date of any note will not be later than December 31, 1968. The interest rate will be at a rate that to the best knowledge and belief of the officers making the borrowings does not exceed the prime loan interest rate at the time and place of making. Applicant states that it will not agree in connection with obtaining a loan from any bank as to any minimum balance which must be maintained.

The proceeds from the bank borrowings, to be evidenced by the Promissory Notes, will be added to the general funds of the Applicant and will be used to pay in part the expenditures made and to be made in 1967 in connection with Applicant's construction program which has a total estimated cost of $97.3 million. Applicant contemplates the expenditure in 1967 of approximately $48 million for generating facilities, $18.3 million for transmission facilities and $19.4 million for electric distribution facilities. The principal items in this 1967 construction program include an estimated $37.1 million for a 590 mw unit at the Allen S. King Plant which has a total estimated cost of $76 million and an estimated $5.8 million for work on the 500 mw Monticello Nuclear Plant which has a total estimated cost of $74.7 million.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the North Dakota Public Service Commission, the South Dakota Public Utilities Commission, and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on February 4, 1967 (32 F.R. 2482), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before February 20, 1967 with the Federal Power Commission Washington, D.C. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued February 27, 1964, *Northern States Power Company*, Docket No. E-7145 (31 FPC 464).

(2) The proposed issuance of Promissory Notes, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Promissory Notes, as described above, is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance of Promissory Notes in the aggregate principal amount of $50,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) of the Act from the requirements of Section 204(a) of the Act.

(5) The proposed issuance of Promissory Notes, described above, will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of Promissory Notes, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

*The Commission orders:*

(A) The proposed issuance of Promissory Notes by the Applicant, in an aggregate principal amount of not to exceed $50,000,000 at any one time outstanding, upon the terms and conditions and for the purposes specified in the application, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all Notes to be issued pursuant thereto, being not later than December 31, 1968.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHWEST PRODUCTION CORPORATION, DOCKET NO. RI65-113 AND PECOS COMPANY, DOCKET NOS. RI65-65, RI65-66 AND RI65-67

### ORDER CONDITIONALLY APPROVING SETTLEMENT PROPOSALS, REQUIRING FILING OF CHANGES IN RATES, REQUIRING REFUNDS, AND SEVERING PROCEEDINGS

(Issued March 10, 1967)

Northwest Production Corporation (Northwest) and Pecos Company (Pecos) filed on August 15, 1966, offers of settlement for sales of natural gas to an affiliate, El Paso Natural Gas Company (El Paso), from various fields in the Permian Basin. Although Northwest and Pecos are respondents in the Permian Basin area rate proceeding, Docket No. AR61-1, these particular suspension proceedings were not included therein. However, the subject proceedings were included in the Commission's show cause order issued with Opinion No. 468 directing respondents to show cause why said opinion should not apply to them.

Northwest and Pecos have filed quality statements in compliance with Opinion No. 468, as modified. Such statements have been accepted by the Commission. The settlement rates proposed here are the rates reflected in the quality statements which are the just and reasonable rates determined in Opinion No.

468.[1] They shall be effective as of September 1, 1965, the effective date of Opinion No. 468.

Northwest and Pecos propose to refund to El Paso the amounts collected subject to refund in the above-entitled proceedings, above the settlement rates, with applicable interest, in accordance with Ordering Paragraph (I) of the Commission's Opinion No. 468, 34 FPC 159. However, we believe that equity requires the 7% interest requirements in these dockets on amounts charged and collected subject to refund be terminated as of November 30, 1966 because of the delay involved in acting upon their offers. In the event Pecos or Northwest elect to commingle such refunds, the applicable interest shall be 5¾%, the prime rate of interest now in effect,[2] from and after December 1, 1966.

Additionally, Northwest and Pecos request that these proceedings be severed from the show cause proceeding issued concurrently with Opinion No. 468, 34 FPC 424, and that they be consolidated with the proceedings in AR61-1. This order will so provide.

Because Northwest and Pecos are affiliates of El Paso our approval of their offers of settlement is without prejudice to any action which may be taken by the Commission in any rate proceedings involving either Northwest, Pecos or El Paso.

*The Commission finds:*

The offers of settlement separately filed by Northwest and Pecos on August 15, 1966, as conditioned herein, are in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

*The Commission orders:*

(A) The offers of settlement filed with the Commission by Northwest and Pecos on August 15, 1966, are approved in accordance with the provisions of this order.

(B) Northwest and Pecos each shall file within 20 days of the issuance of this order a notice of change for each of the FPC Gas Rate Schedules involved in these proceedings reflecting the settlement rates. The notices of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Northwest and Pecos within 30 days of the date of this order shall each compute the difference between the settlement rates and the rates collected subject to refund in the above entitled proceedings, with interest at 7% to November 30, 1966, in accordance with Ordering Paragraph (I) of the Commission's Opinion No. 468, except as modified herein. With respect to such refunds, inclusive of interest, they shall also comply within 30 days of the date of this order with Ordering Paragraph (J) of said opinion, *provided, however*, if either of them elect to retain the refund monies it owes El Paso for use for its own corporate purposes pending further action of the Commission the interest rate on such monies shall be 5¾%, commencing on December 1, 1966, and the offers of settlement are so hereby conditioned.

(D) Upon compliance by Northwest or Pecos with the provisions of this order the instant proceedings shall be respectively severed from the show cause order mentioned above and made subject to Opinion Nos. 468, *supra*, and

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[1] These rates are set forth in the Appendix.

[2] *Reserve Oil and Gas Company*, Docket No. G-18570, *et al.*, order issued March 2, 1966, 35 FPC 309.

468–A, 34 FPC 1068, and the settlement rates set forth in the Appendix shall be effective as of September 1, 1965.

(E) The acceptance herein is without prejudice to any action which the Commission may take in any pending or future rate proceeding involving either Northwest, Pecos or El Paso, or in any area rate proceeding involving any of said companies.

### APPENDIX

| Rate schedule No. | Supplement No. | Docket No. | Rate effective subject to refund [1] | Applicable rate established by quality statement [1] |
|---|---|---|---|---|
| | | | *Cents* | *Cents* |
| Northwest Production Corp.: 2 | 7 | RI65–113 | 18.2430 | [2] 14.64 |
| Pecos Co.: | | | | |
| 1 | 7 | RI65–65 | 18.2430 | [2] 14.64 |
| 2 | 9 | RI65–66 | 16.2160 | [2] 11.82 |
| 3 | 8 | RI65–67 | 18.2430 | [2] 14.64 |

[1] Rates are at 14.65 psia.

[2] Quality statement accepted without condition by Commission order issued June 13, 1966.

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Before Commissioners: Lee C. White, Chairman; Charles E. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP67–174

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 10, 1967)

On December 19, 1966, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP67–174 an application, as supplemented on February 8, 1967, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to establish a new delivery point for the delivery of natural gas to an existing customer, Louisville Gas and Electric Company (Louisville), for resale to the City of Bedford, Trimble County, Kentucky, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate a 2-inch side valve and a dual 2-inch orifice meter station on its 26-inch main line No. 1 near the City of Bedford.

By letter dated December 13, 1966, Louisville informed Applicant that on December 5, 1966, it had received a franchise from the City of Bedford authorizing it to render natural gas service to Bedford and its environs.

Louisville will utilize its existing allocation of contract demand to deliver maximum annual and peak day volumes of natural gas to the City of Bedford and environs in amounts of 25,570 Mcf and 278 Mcf, respectively. Said volumes are at 15.025 psia.

The proposed natural gas service to Louisville will be made pursuant to Applicant's Rate Schedule CD–4.

The total estimated cost of Applicant's proposed project is $7,300, which will be financed from cash on hand.

After due notice, no protest, petition to intervene, or notice of intervention has been filed herein.

At a hearing held on March 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G–885 (7 FPC 213).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Texas Gas Transmission Corporation, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) The certificate issued by paragraph (A) above is conditioned upon the filing by Applicant of a revised service agreement with Louisville Gas and Electric Company in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP67-207

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 10, 1967)

On January 24, 1967, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP67-207 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction, during the twelve month period following the issuance of this certificate, and operation of certain natural gas facilities to be used in the transportation and sale of natural gas in interstate commerce, all as more fully set forth in the application.

Specifically, Applicant seeks authorization for the construction and operation of routine measuring and regulating stations, together with appurtenant facilities necessary for the establishment of new and additional delivery points for the sale and delivery of previously authorized volumes of natural gas to existing utility customers for resale in existing market areas. No deliveries to any one distributor or consumer through any such new delivery point will exceed 100,000 Mcf of natural gas annually and such gas will not be used for boiler fuel purposes.

The total estimated cost of Applicant's proposed facilities will not exceed $100,000. Applicant estimates that the cost of any single project will not exceed $15,000. Applicant will finance its cost of construction from funds on hand.

After due notice, no protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on March 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-1847 (8 FPC 190).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

**(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(1), (c)(2), (c)(3) and (c)(7) of Section 157.7 and paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.**

**(6) The authorization granted hereinafter should be limited to the twelve month period immediately following the issuance of this certificate and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $100,000, and the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.**

**(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.**

***The Commission orders:***

**(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to construct, during the twelve month period immediately following the issuance of this certificate, and operate the proposed facilities hereinbefore described to transport and sell natural gas in interstate commerce, all as more fully described in the application in this proceeding.**

**(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(1), (c)(2), (c)(3) and (c)(7) of Section 157.7 and paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.**

**(C) The authorization granted in paragraph (A) above is limited to construction during the twelve month period immediately following the issuance of this certificate and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $100,000, and the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.**

**(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.**

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**Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## WEST OHIO GAS COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-383

### ORDER AMENDING ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

**(Issued March 10, 1967)**

**On November 25, 1966, West Ohio Gas Company (Petitioner) filed in Docket No. CP66-383 a petition to amend the order issued in said docket on**

August 31, 1966, 36 FPC 569, and a supplement thereto on January 18, 1967, so as to order Michigan Wisconsin Pipe Line Company (Respondent) to provide a second delivery point for Petitioner near Convoy, Ohio, all as more fully set forth in the petition to amend and supplement thereto.

By the order of August 31, 1966, issued in the instant docket Respondent was ordered to construct approximately 1.25 miles of service lateral, to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Petitioner, and to sell and deliver to Petitioner up to 392 Mcf of natural gas per day for distribution and resale in the Village of Convoy, Ohio, and rural areas adjacent thereto.

Petitioner requests that the order issued in the instant docket be amended by ordering Respondent to provide Petitioner with a second gas sales measuring station at the aforementioned interconnection point to permit Petitioner to render gas service to a grain dryer located in close proximity to Respondent's mainline at the point of interconnection with its Convoy lateral.

Due notice of the filing of the petition to amend and opportunity for hearing thereon have been given by publication in the Federal Register on December 13, 1966 (31 F.R. 15713). No protest, petition to intervene or notice of intervention has been filed in this proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 31, 1966, in Docket No. CP66-383 be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued August 31, 1936, in Docket No. CP66-383 is amended so as to direct Respondent to construct and operate a tap and measuring station near Convoy, Ohio, as a second delivery point of natural gas to Petitioner for service of natural gas to a grain dryer as requested in said petition to amend.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## D. E. & R. J. WHELAN, INC.,* DOCKET NO. RI62-39

### ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued March 13, 1967)

On January 9, 1967, D. E. & R. J. Whelan, Inc. (Whelan) filed an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure involving the sale of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) in Harrison County, Texas (Texas Railroad Commission District No. 6) under its FPC Gas Rate Schedule No. 1. The settlement involves a proposed increased rate filed by Whelan from 13.0575¢ to 14.0575¢ per Mcf of natural gas at 14.65 psia, inclusive of tax reimbursement, which was suspended by the Commission for the statutory period but never made effective subject to refund.

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*Formerly D. E. & R. J. Whelan.

Under the terms of the settlement offer, Whelan proposes to delete the present price escalation provisions from the subject rate schedule and to charge a settlement rate of 15¢ per Mcf of natural gas at 14.65 psia for the remaining term of the contract. Whelan reserves the right to file rate changes to reflect any possible tax reimbursement increases.

Additionally, Whelan reserves the right to file an increased rate up to the applicable area ceiling during the remaining term of the subject contract. Such a reservation is not consistent with the provisions of the Second Amendment to the Statement of General Policy No. 61-1, 18 CFR 2.56 which provide for a 15¢ rate when all price escalation clauses have been eliminated except for future changes in tax reimbursement.[1] Therefore, we shall condition our approval of the Whelan proposal to require deletion of the price escalation provisions from the subject rate schedule for the remaining term of the contract without reservation regarding possible future increases in the applicable area ceiling for the remaining term of the contract.

We desire to make it clear that the conditional acceptance of the Whelan offer of a settlement shall not be construed as approval of any future increased rate filed in accordance with the reservation of the right to file increases to cover future tax increases as provided in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings involving the rate and rate schedule of Whelan.

*The Commission finds:*

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Whelan on January 9, 1967, and as conditioned herein, is consistent with the Statement of General Policy No. 61-1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

*The Commission orders:*

(A) The offer of settlement filed with the Commission by Whelan on January 9, 1967, as herein conditioned, is approved in accordance with the provisions of this order.

(B) Whelan shall file within 30 days from the date of issuance of this order, an original and one copy of their acceptance or rejection of the terms and conditions of this order applicable to them; *provided, however,* that if Whelan should file their acceptance such shall not be binding upon them without their express agreement, if any other party to this proceeding shall file for reconsideration or rehearing within the statutory period.

(C) Whelan shall file within 45 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf of natural gas at 14.65 psia settlement rate specified in their offer of settlement, and an executed contract amendment to their FPC Gas Rate Schedule No. 1 eliminating all price escalation provisions therefrom without reservation, except for possible future changes in tax reimbursement. The notice of change and contract amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

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[1] See *Frio-Tex Oil & Gas Company,* Docket No. RI62-195, order issued February 23, 1966, 35 FPC 244, involving a settlement under the Seventh Amendment to the policy statement. *Cf. Warren Petroleum Corporation,* Docket No. RI61-63, 30 FPC 1040.

(D) Upon notification by the Secretary of the Commission that Whelan has complied with the terms and conditions of this order, the rate and charge of 15¢ per Mcf of natural gas at 14.65 psia sold under their FPC Gas Rate Schedule No. 1, specified in their settlement offer, as herein conditioned, shall be effective as of the date of this order, and the proceedings in Docket No. RI62-39 shall be deemed terminated.

(E) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Whelan, the Commission staff, or any affected party hereto, in any proceedings now pending, or hereafter instituted, including area rate or similar proceedings, by or against Whelan, or any other companies, person or parties affected by this order.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP67-153

### FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT AND ACCEPTING FOR FILING NOTICE OF CANCELLATION OF TARIFF SHEETS

(Issued March 13, 1967)

On December 1, 1966, Humble Gas Transmission Company (Applicant) filed in Docket No. CP67-153 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain transportation services, all as more fully set forth in the application.

Specifically, Applicant seeks to abandon services rendered under Rate Schedule T-1 for the United Gas Pipe Line Company (United) and under Rate Schedule X-1 for joint operations by and between Applicant (formerly Interstate Natural Gas Company, Incorporated) and United. Rate Schedule T-1 provides for the transportation of natural gas for United from Humble's DeSiard Compressor Station in the Monroe Field, Ouachita Parish, Louisiana, a distance of 165 miles to Humble's Scotland Metering Station, East Baton Rouge Parish, Louisiana. Rate Schedule X-1 is a joint operating agreement between Humble and United which provides for the operation of certain facilities by United commencing at Scotland Station for the purchase of gas from suppliers and for the transportation and sale of the gas to customers and markets attached to such facilities, primarily New Orleans, Louisiana.

Applicant has not transported gas for United since 1944 and the agreement for such transportation expired in 1958.

United has taken over the interest of Applicant in the facilities and sales in the joint operations. No facilities are proposed to be abandoned. Customers served by United under its joint agreement with Humble will not be affected by the cancellation of such agreement. United, alone, will continue to serve them. On September 8, 1964, the Louisiana Public Service Commission authorized United to purchase Humble's interest in the business and facilities. This authorization became effective as of January 1, 1964. By letter filed December 12, 1966, United raises no objection to the proposed abandonment.

Applicant has filed tariff sheets, First Revised Sheet No. 10 to its FPC Gas Tariff, Original Volume No. 1, and First Revised Sheet No. 1 to its FPC

Gas Tariff Original Volume No. 2 (notices of cancellation) proposed to be effective on February 1, 1967.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Humble Gas Transmission Company, a Delaware corporation having its principal place of business in New Orleans, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 29, 1963, in Docket No. CP63-56 (29 FPC 162).

(2) The transportation service rendered United Gas Pipe Line Company proposed to be abandoned, as hereinbefore described, and as more fully described in the application herein, utilized the natural gas facilities of Applicant in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid transportation service and joint operations are permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that Applicant's First Revised Sheet No. 10 to its FPC Gas Tariff Original Volume No. 1, and First Revised Sheet No. 1 to its FPC Gas Tariff Original Volume No. 2 be accepted for filing effective as of the date of issuance of this order.

*The Commission orders:*

(A) Permission for and approval of the abandonment of the transportation service and joint operations hereinbefore described as more fully described in the application in this proceeding are granted to Applicant.

(B) Humble Gas Transmission Company's First Revised Sheet No. 10 to its FPC Gas Tariff Original Volume No. 1 and First Revised Sheet No. 1 to its FPC Gas Tariff Original Volume No. 2 are accepted for filing to be effective on the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## LAND WITHDRAWN IN POWER SITE, CLASSIFICATION NO. 304, DOCKET NO. DA-525-OREGON, BUREAU OF LAND MANAGEMENT, PORTLAND, OREGON

### ORDER DENYING APPLICATION UNDER SECTION 24 OF THE FEDERAL POWER ACT

(Issued March 13, 1967)

Application was filed by the Bureau of Land Management (Applicant) Portland, Oregon, seeking a determination under Section 24 of the Federal

Power Act for the purpose of restoring the following described lands of the United States:

Willamette Meridian, Oregon

T. 5 N., R. 7 W., sec. 10: SW¼NE¼ (40 acres)

Applicant seeks disposal of the land under Sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852) in order that the State of Oregon may acquire the lands for such further disposition as the State may elect.

The land lies near Fishhawk Creek, a tributary to the Nehalem River, and is withdrawn in Power Site Classification No. 304 approved January 3, 1938. Since there are two Fishhawk Creeks in the reach of the Nehalem River herein involved, we point out that the subject land lies near that Fishhawk Creek (lower of the two) which enters Nehalem River in T. 5 N., R. 7 W.

The Bureau of Reclamation and the Corps of Engineers have initiated cooperative studies of multiple purpose resource development in the Nehalem and Nestucca River Basins, which are currently underway. Several preliminary studies have been made by the U.S. Corps of Engineers and U.S. Geological Survey of the waterpower resources of the Nehalem and Nestucca River Basins, all of which propose development of the so-called "Vernonia Reservoir" on the Nehalem in the reach herein involved, which could be developed at any one of three damsites (Squaw Creek, Tideport and Elsie) located on the Nehalem River. The Elsie damsite appears to be the most favorable of the three and the latest study (1965) made by the U.S. Geological Survey proposes a reservoir with a maximum water surface of 600 feet above mean sea level. Development to this elevation would back water up lower Fishhawk Creek and thereby inundate about one-fourth of the subject land. The reservoir would have a capacity of 1,500,000 acre-feet with a maximum water surface elevation of 600 feet above mean sea level. The potential project would have an installed capacity of 25,000 kilowatts, an average annual generation of 130 million kilowatt-hours, and a gross head of 165 feet.

*The Commission finds:*

The subject land is valuable for power purposes.

*The Commission orders:*

The aforesaid application is hereby denied.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 1389

### ORDER APPROVING REVISED EXHIBIT L DRAWING FOR PROJECT

(Issued March 13, 1967)

On June 13, 1966, Southern California Edison Company, licensee for Project No. 1389, filed for Commission approval a revised Exhibit L drawing pertaining to the Rush Creek Meadows dam. The project is located on Rush Creek, a tributary to Mono Lake, in Mono County, California, and affects lands of the United States within the Mono National Forest.

The revised Exhibit L drawing shows a project modification consisting of the addition of ten ¾-inch in diameter post-tensioned steel anchor rods on the spillway abutment of the dam. The dam was constructed between 1918 and 1925 and its design is conventional except for the size of the right abutment thrust block. The dam was inspected in 1964 and 1966 by the licensee's board of engineering consultants which was concerned over the unconventional design of the thrust block and had recommended strengthening the dam by adding anchor rods at the right abutment. The post tension anchors tie the dam to the abutment, thereby enabling the right abutment to accept cantilever loading and thus improve the distribution of loading to the archings. The modification to the dam, which was accomplished in 1966, improves its safety factor and is a desirable improvement.

*The Commission finds:*

Exhibit L–1 (Amended) drawing FPC No. 1389–13, entitled "Rush Meadows Dam, Rush Creek Project," conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and license Exhibit L–1 drawing (FPC No. 1389–6), which is to be superseded, should be eliminated from the license for the project.

*The Commission orders:*

The amended Exhibit L drawing designated and described in the above finding is hereby approved as part of the license for Project No. 1389, and the license Exhibit L drawing, which is superseded, is hereby eliminated from the license for the project.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. G–585, ET AL.

### ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND SUBSTITUTING PARTY IN PENDING PROCEEDINGS

(Issued March 14, 1967)

On December 28, 1966, Alabama-Tennessee Natural Gas Company (Petitioner) filed in Docket No. G–585, *et al.*, a petition to amend the orders issuing it certificates of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act by authorizing Petitioner to continue the sales and transportation of natural gas authorized therein as an Alabama corporation in lieu of as a Delaware corporation, all as more fully set forth in the petition. Petitioner also requests that the Alabama corporation be substituted in lieu of the Delaware corporation as party in all pending proceedings.

Petitioner has changed the state of its incorporation on January 1, 1967, from Delaware to Alabama without change in operations or corporate activity. The Alabama corporation proposes to adopt the tariff of the Delaware corporation.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the petition to amend has been received.

*The Commission orders:*

(A) The orders issuing certificates of public convenience and necessity to Alabama-Tennessee Natural Gas Company, a Delaware corporation, are amended by authorizing the continuation of the sales and transportation of natural gas by Alabama-Tennessee Natural Gas Company, an Alabama corporation; and in all other respects said orders shall remain in full force and effect.

(B) Alabama-Tennessee Natural Gas Company, an Alabama corporation, is substituted in lieu of Alabama-Tennessee Natural Gas Company, a Delaware corporation, in all proceedings pending before the Commission.

(C) This order shall be effective as of January 1, 1967, upon the submission by Petitioner of a certified copy of its certificate of incorporation in the State of Alabama on January 1, 1967.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PACIFIC GAS AND ELECTRIC COMPANY, PROJECT NO. 2155

### ORDER APPROVING EXHIBITS K AND M SHEETS FOR PROJECT

(Issued March 14, 1967)

On March 25, 1966, Pacific Gas and Electric Company, licensee for Chili Bar Project No. 2155, filed application for Commission approval of Exhibits K and M sheets showing the inclusion in the license for the Chili Bar project of a newly constructed 3.2 mile section of 60 kv transmission line and a 0.4 mile section of 60 kv line formerly under license to the licensee as a part of the project works comprising Project No. 78, the surrender of the license for which was accepted by Commission order issued September 2, 1966, 36 FPC 575. The 3.2 mile section extends from Chili Bar power plant to a point of connection with the 0.4 mile section of previously constructed line which in turn extends to a junction with the licensee's interconnected transmission system at a point called Chili Bar Junction.

The 3.2 mile section of the subject line, which had not been constructed at the time of issuance of the license for the Chili Bar project, is referred to in the license (subparagraph (b) of paragraph (4)) as: "a 69-kv transmission line extending about 4 miles from Chili Bar Power Plant to the existing 69-kv system of Pacific Gas and Electric Company." That section of the line and the 0.4 mile section of line operate at 60-kv.

No lands of the United States are affected by the line.

*The Commission finds:*

The following described Exhibits K and M sheets conform to the Commission's rules and regulations and should be approved as part of the license for the project;

Exhibit K-3 (FPC No. 2155-18) "Transmission line Chili Bar Project," and

Exhibit M-1: a single typewritten sheet entitled "General Description and Specifications of Project Transmission Line and Station Equipment," filed March 25, 1966.

*The Commission orders;*

(A) The Exhibits K and M sheets described in the above finding are hereby approved as part of the license for Project No. 2155.

(B) The transmission line described in subparagraph (B) of paragraph (4) of the license for Project No. 2155 is redescribed as a 3.6 mile long 60-kv transmission line between the Chili Bar Power Plant and Chili Bar Junction.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## LANDS WITHDRAWN IN POWER SITE RESERVE NO. 753 AND PROJECT NOS. 420, 1138, 1222, 1922 AND 2328, DOCKET NO. DA-88-ALASKA, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

### ORDER DENYING APPLICATION UNDER SECTION 24 OF THE FEDERAL POWER ACT

(Issued March 17, 1967)

Application was filed by the Bureau of Land Management (Applicant) Anchorage, Alaska, seeking a determination under Section 24 of the Federal Power Act for the purpose of restoring to entry certain lands of the United States withdrawn for power purposes, to permit the State of Alaska to select the lands in accordance with the State's Enabling Act of July 7, 1958 (72 Stat. 339) for sale or other disposition.

The lands, which have not been officially surveyed and cannot, therefore, be specifically described herein, lie in an area between the boundary of the Tongass National Forest and the City of Ketchikan. According to an unofficial survey (United States Survey No. 3835) the lands comprise 6,351.71 acres.

The lands are withdrawn for power purposes in Power Site Reserve No. 753, approved December 9, 1920; in Project No. 420 pursuant to application for license filed July 21, 1927, in Project No. 1138 pursuant to application for license filed May 31, 1932, in Project No. 1222 pursuant to application for license filed September 29, 1932, in Project No. 1922 pursuant to application for preliminary permit filed September 7, 1944, and in Project No. 2328 pursuant to application for license filed November 26, 1962.

The lands withdrawn for Project No. 420 are occupied by an aqueduct and a natural creek which has been improved to supply water to a powerhouse located in and owned by the City of Ketchikan, Alaska. The lands withdrawn for Project Nos. 1138, 1922 and 2328 are occupied by transmission lines only and consequently, are subject to the Commission's general determination of April 17, 1922 (2nd Ann. F.P.C. Rept. 128).

In view of the occupancy on portions of the subject lands by power facilities, such lands are valuable for power purposes and, except as to those occupied by transmission lines only, their restoration under the provisions of Section 24 of the Federal Power Act would be adverse to their power value.

*The Commission finds:*

The subject lands are valuable for power purposes.

*The Commission orders:*

The aforesaid application is hereby denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITIES SERVICE GAS COMPANY, DOCKET NO. CP67-203

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 20, 1967)

On January 20, 1967, Cities Service Gas Company (Applicant) filed in Docket No. CP67-203 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant seeks permission and approval to abandon by reclaiming approximately 3.9 miles of 2-inch, 3-inch and 4-inch pipeline in the Wherry Lateral, Rice County, Kansas, and approximately 7,000 horsepower at its existing Wichita Compressor Station, Sedgwick County, Kansas. Applicant also seeks permission and approval to replace approximately 5.1 miles of 18-inch gas pipeline with 5.1 miles of 16-inch pipeline and related appurtenant facilities in Washington County, Oklahoma.

Applicant proposes to construct and operate the following facilities:

(1) A 500 horsepower compressor unit at its existing Beloit Compressor Station in Mitchell County, Kansas;

(2) Three 2,400 horsepower compressor units and related appurtenant facilities at its proposed Haysville Compressor Station, Sedgwick County, Kansas;

(3) Approximately 7.8 miles of 20-inch pipeline and related appurtenant facilities extending from its Wichita Compressor Station to the side of the proposed Haysville Compressor Station;

(4) Approximately 7.6 miles of 20-inch pipeline and related appurtenant facilities extending from its Pampa-Wichita 20-inch pipeline to the site of the proposed Haysville Compressor Station;

(5) Approximately 1 mile of 20-inch pipeline and related appurtenant facilities extending from its Blackwell-Wichita pipeline to the proposed Haysville Compressor Station;

(6) Approximately 24.4 miles of 26-inch pipeline and related appurtenant facilities paralleling and partially looping its 26-inch Blackwell-Grabham pipeline in Osage County, Oklahoma, and in Cowley and Chautauqua Counties, Kansas.

Applicant's Beloit Station consists of 2 compressor units totaling approximately 320 horsepower. These units were built in 1925 and installed at Beloit in 1951. Periods of high demand have necessitated simultaneous operation of both units. The proposed 500 horsepower compressor unit is intended to insure sufficient pressure to enable Applicant to serve the peak day and peak hour demands of the towns on its Osborne and Smith Center laterals.

Applicant's Wichita Station consists of compressor units capable of producing approximately 7,000 horsepower. This station was installed in 1927 and additions were made in 1928, 1929 and 1930. Applicant's reasons for proposing the abandonment of the Wichita Station include the fact that the City of Wichita has expanded to such an extent that the station site is now within the city limits, that wood pilings under the engine foundations have deteriorated and that vibration problems have resulted in a loss of compression capacity.

The three 2,400 horsepower compressor units which comprise the proposed Haysville Station will be constructed south and outside the congested metropolitan area of Wichita. In addition to alleviating the aforementioned problems, the Haysville Station will also facilitate the transportation of volumes of natural gas from Wichita to Ottawa and other markets in the northeast portions of Applicant's system.

Construction of the proposed 24.4 miles of 26-inch pipeline loop on Applicant's Blackwell-Grabham 26-inch pipeline is intended to provide for the transportation of increased volumes of natural gas from the Blackwell to the Grabham station.

Replacement of the subject 5.1 miles of 18-inch pipeline is designed to enhance dependability of service to the cities of Bartlesville, Delaware and Nowata, Oklahoma, as well as facilitating the movement of gas to the Grabham station.

The subject 3.9 miles of 2-inch, 3-inch and 4-inch pipeline in the west end of Applicant's Wherry Lateral was used to serve lease operations which have ceased. No sales are being made from this pipeline and no service will be adversely affected by its retirement.

Applicant's peak day flow map for the winter of 1967–68 indicates that it will be able to serve an additional 42,000 Mcf in sales of natural gas over the estimated 1966–67 winter peak day by constructing and operating the proposed facilities. Applicant's firm sales are estimated to be increased by 54,800 Mcf while its interruptible sales will be decreased by 12,800 Mcf, resulting in an overall increase of 42,000 Mcf in system-wide sales.

Additional peak day sales will be made possible by an increase from 75,000 Mcf to 150,000 Mcf per day in Applicant's Webb Storage withdrawal, thereby offsetting minor declines in deliveries from the Barber County and Eureka Fields connected to Applicant's Oklahoma Hugoton pipeline and decline in volumes from connections south of the Blackwell station.

The total estimated cost of Applicant's project is $6,840,000, which will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest has been filed herein.

At a hearing held on March 16, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(7) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Cities Service Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within one year from the date of this order.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.

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## OPINION NO. 517

## FLORIDA POWER & LIGHT COMPANY, DOCKET NO. E-7210

### OPINION AND ORDER DETERMINING JURISDICTION

(Issued March 20, 1967)*

### *Syllabus*

1. Florida Power owns and operates facilities for transmission of electric energy in interstate commerce; such facilities do not fall within local distribution exemption of Section 201(b) of the Power Act and Company must file original cost statement and comply with all other requirements of Commission's Regulations under the Act. PP. 547; 573, 574.
2. Argument that there is no record support for finding Florida Power is engaged in transmission of electric energy in interstate commerce is without merit; fact of its operation in electromagnetic unity with suppliers in and outside of Florida in and of itself demonstrates that it owns and operates facilities for interstate transmission of electric energy. PP. 549; 564, *et seq.*
3. Evidence convincingly establishes that electric energy is transmitted in interstate commerce to and from Power Company's lines and nature of such showing is consistent with and satisfies tests established in prior cases to support finding that wholesale sales are in interstate commerce. P. 549.

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*Initial decision appears on p. 560. Rehearing denied by order issued May 2, 1967, 37 FPC 833. Set aside, *Florida Power & Light Co.* v. *F.P C.*, 430 F. 2d 1377 (CA5-1970), affirmed, *F.P.C.* v. *Florida Power & Light Co.*, 404 U.S. 453 (1972).

**4. It is reasonable to rely on methodology used in prior cases to establish here that Florida Power is engaged in interstate transmission of electric energy and is thus a "public utility" within meaning of the Act. P. 550.**

**5. Staff's power flow studies rest on concept that there is a commingling of energy from different sources at a bus with result that energy which flows away from such bus is so fully commingled as to consist of energy which has entered bus both from interstate and intrastate sources. P. 550.**

**6. Staff's commingled method reflects physical reality of bus better than Florida Power's steady state or system studies method. PP. 551; 570.**

**7. Fact that Florida Power could operate as a self-sufficient utility is not controlling because it simply does not operate the system in that manner—it is the actual mode of operation, not how system could operate that is important. PP. 551, 552.**

**8. Assuming discretion to exercise jurisdiction here, Commission *rejects de minimis* argument, stating this is not a case where jurisdiction should be declined and it has already been determined that jurisdiction does not depend upon a finding of any particular volume or proportion of interstate energy flowing in a system and such position has been judicially approved. P. 552.**

**9. Congress sought not only to give Commission exclusive jurisdiction over wholesale sales in interstate commerce, but additionally to supplement local regulations at the Federal level in such areas as accounting, interlocking directorates, mergers and consolidations and the promotion of interconnection and coordination of nation's facilities for generation, transmission and sale of electric energy. PP. 553, 554.**

**10. Power Company will not be subjected to any unduly burdensome costs by requirement that it keep its accounts in accordance with Commission's Uniform System of Accounts for Public Utilities. P. 554.**

**11. Assertion that Company will incur estimated 4 to 6 million dollar expense to complete initial plant inventory required by Uniform System of Accounts is based on indefinite and conjectural evidence, plainly revealing a misunderstanding of requirements of Commission's regulations. P. 554.**

**12. To extent that exemption from accounting requirements is sought because company's transmission of energy is predominantly intrastate, Commission *restates Connecticut Light and Power Co.* and *notes* that proponents of Power Act regarded it as essential that Commission possess power to get accounting information under a unified system, regardless of fact that reporting utility might also be subject to state regulation. P. 555.**

**13. Commission *determines* Florida Power is a public utility within the meaning of Section 201 of the Federal Power Act and thus subject to its jurisdiction.**

**Commissioner Carver, *joined* by Commissioner O'Connor, *dissenting***

***Richard M. Merriman* and *Harry A. Poth, Jr.* for Florida Power & Light Company.**

***James L. Graham, Jr.* for Florida Public Utilities Commission.**

***George Spiegel* for City of Clewiston, Florida.**

***Drexel D. Journey* and *Watt N. Martin* for the Staff of the Federal Power Commission.**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

WHITE, *Chairman:*

This is a proceeding to determine whether the Florida Power & Light Company (FPL) is a public utility within the meaning of Section 201 of the Federal Power Act, and whether it should be required to maintain its accounts in accordance with the Commission's Uniform System of Accounts for Public Utilities and Licensees.

The Commission instituted the investigation in this docket on February 26, 1965, 33 FPC 328. The Florida Public Service Commission (Florida Commission) filed notice of intervention dated March 17, 1965, and thereafter the City of Clewiston, Florida (Clewiston), was granted limited intervention.[1] Hearings were held on October 4, 5, 7, 8, and 12, 1965, and again on November 3, 1965. On July 12, 1966, the Presiding Examiner, Seymour Wenner, issued an initial decision in which he found that FPL owns and operates facilities, among others, for the transmission of electric energy transmitted from points of generation in the States of Georgia and Florida to points of consumption outside the state in which it is generated, and therefore is a public utility under Section 201 of the Act, subject to the Commission's jurisdiction.

He further held that FPL must file original cost statements as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, and that it must comply with all other requirements of the Commission's Regulations under such Act.

The proceeding is before the Commission on the Examiner's decision, exceptions filed by FPL and the Florida Commission, and staff's opposition to these exceptions. FPL and the Florida Commission contend that there is no substantial evidence in the record to support the Examiner's finding that FPL transmits electric energy in interstate commerce, and they urge that the Commission, in the exercise of its discretion, should in any event decline jurisdiction over FPL. Oral argument was held before the Commission on November 28, 1966.

For the reasons set forth below we find that FPL's and the Florida Commission's exceptions are not persuasive and do not warrant our reversal of the Examiner's decision. It is our opinion that the basic findings of fact and the conclusions of law in the Examiner's comprehensive initial decision are fully supported by the evidence of record, and that these findings and conclusions, as supplemented by our discussion herein, should be approved. We agree with the Examiner that FPL owns and operates facilities for the transmission of electric energy in interstate commerce, that these facilities do not fall within the local distribution exemption provisions of Section 201(b) of the Federal Power Act, and that FPL must file original cost statements and comply with all other requirements of the Commission's Regulations under such Act.

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[1] On September 7, 1965, Clewiston filed a complaint in Docket No. E-7243, requesting that the Commission order FPL, pursuant to Section 202(b) of the Act, to connect its facilities with those of Clewiston and render direct wholesale service at reasonable rates. After the hearings, Clewiston negotiated a rate settlement with its power suppliers (U.S. Sugar Corporation and Glades Electric Cooperative, Inc.), and moved for the dismissal of its application in Docket No. E-7243. The motion was granted on July 6, 1966, 36 FPC 17.

Inasmuch as the Examiner's decision sets forth in detail the factual background of this proceeding and the legal principles applicable thereto, we shall not recite the factual details in full, but shall refer essentially to those raised by FPL and the Florida Commission in their exceptions.

The record shows that FPL is engaged in the generation, transmission, distribution, and sale at wholesale and at retail of electric energy in the State of Florida. It is the largest electric utility in the state, with a net dependable generating capacity of 2.8 million kw, and it supplies service to about 931,400 customers in more than 500 cities, rural communities and adjacent areas. As of December 1964,[2] it operated ten steam-electric generating plants interconnected by a transmission grid of 2,500 miles, of which 1,400 miles operate at high voltage, 115 kv or above. On the basis of national standing, FPL is one of the most important electric utilities in the United States. In 1965 its rank was ninth nationally in revenues, fourteenth in investment in gross electric utility plant, and sixteenth in kilowatt hour sales.

FPL is directly interconnected with four other Florida electric systems, as follows: Florida Power Corporation (Corp), Tampa Electric Company (Tampa), Orlando Utilities Commission (Orlando), and the city of Jacksonville (Jacksonville). FPL, Corp, and Tampa form the Florida Operating Committee (Florida Pool) with Jacksonville and Orlando as associate members. The Florida Pool meets several times a year to consider mutual problems relating to the interconnected operation of the systems, including the coordination of spinning reserves, the arrangement of compatible plant maintenance schedules, and the coordination of plans for the construction of transmission lines and the staggered construction of generating units. The spinning reserves of the Florida Pool equal the generating capacity of the largest single unit of the five-member systems, and by voluntary agreement of the members, are shared proportionally. According to FPL's reports in its FPC Form No. 12 for 1964, its required reserve capacity for that year was 404,000 kw, of which amount it supplied 172,000 kw. The balance of 232,000 kw was reported as being available from the other members of the Florida Pool.

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[2] Unless otherwise noted, the figures stated are approximate and are for the calendar year 1964.

FPL exchanges a substantial amount of electric energy with the other members of the Florida Pool. During 1964 FPL transferred a total of 189,422,000 kwh to the four other Pool members, and received in return a total of 199,059,000 kwh, itemized as follows:

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|---|---|
| Kwh transferred from FPL to: | |
| Corp | 107, 642, 000 |
| Tampa | 43, 081, 000 |
| Jacksonville | 17, 268, 000 |
| Orlando | 21, 431, 000 |
| Kwh transferred to FPL from: | |
| Corp | 61, 589, 000 |
| Tampa | 59, 404, 000 |
| Jacksonville | 18, 181, 000 |
| Orlando | 59, 876, 000 |

The electric energy interchanged by FPL in 1964 totaled three percent of its net generation of 12 billion kwh.

Corp, which is interconnected with Tampa and Orlando as well as with FPL, is also interconnected with power companies outside of the State of Florida. Thus, it is directly interconnected with Georgia Power Company (Georgia), a subsidiary of The Southern Company (Southern). Southern is a holding company whose other subsidiaries are Gulf Power Company (Gulf) which operates in northwestern Florida, Alabama Power Company (Alabama), and Mississippi Power Company (Mississippi). Corp is also directly interconnected with Gulf, and Gulf is interconnected with Georgia and Alabama. Corp has an agreement with the subsidiaries of Southern whereby Corp makes 100,000 kw available to these subsidiaries during the summer, and in return, the subsidiaries make 100,000 kw available to Corp during the winter. During 1964 Southern delivered 167,476,000 kwh to Corp, and Corp delivered 157,324,000 kwh to Southern. Of these totals, approximately 97,000,000 kwh represented deliveries from Georgia to Corp, and 82,000,000 kwh represented deliveries from Corp to Georgia. In addition, 3.9 million kwh were wheeled for the Southwestern Power Administration over Southern's lines across the Georgia-Florida state line to Corp. Georgia is also interconnected with Duke Power Company, Tennessee Valley Authority, and Southeastern Power Administration. These systems operate in states beyond Georgia.

FPL and the other members of the Florida Pool are also members of a multi-state electric network, the Southeast Region of the Interconnected Systems Group (ISG) which covers the southeastern and central portions of the United States. FPL's membership in the ISG provides acceptable frequency control and also automatic assistance during emergencies in the event of any generation outage of less than 100 mw on its system. In this connection it may be noted that 12 of FPL's 24 generating units generate 75 mw or less. An outage of any of these units would lead to almost instantaneous assistance to FPL. FPL, in turn, operates in synchronism with the 140 members of ISG and is ready to assist them in case of emergency. Thus, FPL contributed 8 mw to ISG to assist a midwestern utility which had sustained a 580–mw generator loss.

The testimony and evidence of record support the Examiner's findings that the electric power on all the interconnected systems in which FPL, Corp, and Georgia participate is supplied as alternating current at a frequency of 60 cycles; that the frequency of each system is in synchronism with that of all the others in the interconnection; that there is a tie-line bias with frequency control on the interconnected systems which permits a free flow of power and energy throughout the networks in which FPL, Corp, and Georgia participate; that all 140 members of the ISG operate in parallel and are interlocked electromagnetically; and that FPL can receive from or contribute to ISG up to 100 mw. The record further supports the Examiner's findings that FPL normally has no control over the actual transfers of electric power and energy with any particular electric system with which it is interconnected; that since electric energy can be delivered virtually instantaneously when needed on a system at a speed of 186,000 miles per second, such energy can be and is transmitted to FPL when needed from out-of-state generators, and in turn can be and is transmitted from FPL to help meet out-of-state demands; and finally, that there is a cause and effect relationship in electric energy occurring throughout every generator and point on the FPL, Corp, Georgia, and Southern systems which constitutes interstate transmission of electric energy by, to, and from FPL.

In its exceptions FPL argues that there is no substantial record support for the Examiner's finding that it is engaged in the transmission of electric energy in interstate commerce. We find no merit in this argument. The Examiner concluded that the operation of FPL in electromagnetic unity with the suppliers in and outside of Florida in and of itself demonstrated that it owned and operated facilities for the interstate transmission of electric energy. This finding is also supported by the evidence produced by staff at the hearing which convincingly establishes that electric energy is transmitted in interstate commerce to and from FPL's lines. The nature of staff's showing is fully consistent with, and satisfies the tests which we have established in numerous opinions issued in the last two years to support a finding that wholesale sales are in interstate commerce. See *Indiana & Michigan Electric Company*, Opinion No. 458, 33 FPC 739, affirmed *Indiana & Michigan Electric Company* v.

*Federal Power Commission*, 365 F. 2d 180 (CA7–1966), certiorari denied, 385 U.S. 972; *Arkansas Power & Light Company*, Opinion No. 473, 34 FPC 747 (1965), affirmed *Arkansas Power & Light Company* v. *Federal Power Commission*, 368 F. 2d 376 (CA8–1966); *Public Service Company of Indiana, Inc.*, Opinion No. 483, 34 FPC 1513 (1965), affirmed in *Public Service Company of Indiana, Inc.* v. *Federal Power Commission*, 375 F. 2d 100 (CA7–1967); the *Cincinnati Gas & Electric Company*, Opinion No. 485, 35 FPC 99 (1966). Certainly it is reasonable to rely on the methodology used in the above cases to demonstrate that particular sales are in interstate commerce to establish in this proceeding that FPL itself is engaged in the interstate transmission of electric energy and is thus a "public utility" within the meaning of the Act.

Thus through the application of the same techniques here that it had utilized in those other cases staff demonstrated by its record exhibits the flow of energy from Georgia across the Georgia-Florida state line through Corp's system and into FPL's transmission lines, as well as a reverse flow from FPL's lines through Corp's system to Georgia. See Staff's Exhibit Nos. 18, 19, 32, and 33.[3] For example, Staff's Exhibit No. 18, at page 6, graphically demonstrates that on September 28, 1964, at 7:00 o'clock p.m., there was a flow of 51,000 kw of interstate power from Georgia to Corp and an instantaneous flow of 50,000 kw of commingled interstate and intrastate power from Corp to FPL. We are not persuaded by FPL's exceptions that the Examiner committed error in basing his findings on such staff exhibits rather than on FPL's own system studies which FPL contends show that no Georgia energy can enter the FPL lines and that no FPL energy can flow as far north as Georgia.

As ably explained by the Examiner, the power flow studies prepared by staff all rest on the concept that there is a commingling of energy from different sources at a bus with the result that the energy which flows away from such bus is so fully commingled as to consist of energy which has entered such bus both from interstate and intrastate sources. Staff recognizes that energy flows to and from a bus as three-phase alternating current, and staff treats a bus as a point, or a tank, or a reservoir where all the energy supplied to the bus is commingled. The studies prepared by FPL, on the other hand, treat the bus as having physical dimensions, and replace each three-phase alternating current bus structure by a single conductor bus.

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[3] Staff's Exhibit No. 18 shows the flow of energy from Georgia through Corp's system and into FPL transmission lines via the Jasper-Fort-White-Turner-Sanford interconnections on designated hours of 22 days out of a 4-month period in 1964. Staff Exhibit No. 19 indicates the presence of such flows during hours earlier than 7:00 a.m. on 20 of the 22 days listed in Exhibit No. 18. Staff Exhibit No. 32 further shows that energy transmitted from FPL's Sanford Plant flowed during 8 days of the same 4-month period over Corp lines into the Georgia Power System via the Turner-Fort-White-Jasper interconnections.

FPL uses the point-to-point tracing principles of direct current circuits with static power sources and with steady state power flows. This steady state method treats the power flow through the bus as constant in value and direction, on the basis that balanced three-phase power under steady state conditions is constant in value and direction from instant to instant. Although FPL's method may lend itself to a theoretical showing of energy flow which may demonstrate that energy will flow from a certain source to a certain load,[4] this method does not fully or accurately reflect the actual operation of a bus, and it does not show the physical reality of a three-phase electric power system as satisfactorily as does staff's concept. Certainly FPL's method is of no value in demonstrating a negative, namely, that energy will not flow through a bus to a certain specific transmission line. Yet, FPL's reliance on this method in this proceeding seeks to prove just such a negative.

The Examiner correctly found that staff's commingled method reflected the physical reality of the bus better than did FPL's steady state or systems studies method. The essential soundness of the commingled method has long been recognized and approved. See *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414 (1952); *Wisconsin Michigan Power Co.* v. *Federal Power Commission*, 197 F. 2d 472 (CA7–1952), cert. denied, 345 U.S. 934 (1953). Our adoption of the Examiner's holding on this point certainly is consistent with our repeated approval of the commingled method in recent jurisdictional proceedings where we have found a need for precise methods in analyzing power flows on highly complex systems involving a multiplicity of interconnections. See our opinions in *Indiana & Michigan* and *Arkansas*, cited at pp. 549, 550, *supra*.[5]

Consideration has been given to FPL's assertion that because of the unique peninsular nature of its service area it planned its system to be self-sufficient, and that it possesses sufficient generating capacity of its own to meet its loads without any dependence upon the spinning reserves or emergency power of other Florida or out-of-state systems. We do not find this assertion persuasive. The fact that FPL could operate as a self-sufficient utility is not controlling because FPL simply does not operate its system in that manner. The record in

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[4] The steady state method was used to establish the fact of such a flow in *City of Colton, California* v. *Southern California Edison Company*, Opinion No. 346, 26 FPC 223, 234 (1961), *affirmed sub nom. Federal Power Commission* v. *Southern California Edison Company*, 376 U.S. 205 (1964), reversing 310 F. 2d 784 (CA9–1962). FPL's reliance on staff's use of the steady state method in *Colton*, however, is misplaced. As the Commission pointed out in its opinion in that case, the result reached by staff's technique would have been the same had staff there treated the bus as a point under the commingling concept.

[5] In view of the above showing of substantial flows of interstate energy to and from FPL's system, it is clear that FPL owns facilities which do not come within the purview of the exemptions to the Commission's jurisdiction set forth in Section 201(b) of the Act.

this proceeding makes it plain that FPL receives substantial benefits from its participation in the Florida Pool in the coordination of spinning reserves, the arrangement of plant maintenance schedules, and the assurance of reliability of frequency control and from both the Florida Pool and ISG in the form of automatic assistance in the case of emergencies. As we stated in our opinion in *Indiana & Michigan Electric Company*, *supra*, it is the system's actual mode of operation, not how the system could operate, that is important. Moreover, the particular operating pattern actually used by FPL is consistent with sound operating practices and with the principles enunciated in the Commission's National Power Survey issued in December 1964 in which all segments of the electric power industry participated fully and cooperatively.

We have also considered FPL's contention that it receives virtually no benefits from its membership in ISG with respect to emergency assistance because of its assertion that the Florida peninsula would be electrically isolated from the states to the north in the event of an outage of approximately 100 mw or greater. This contention minimizes the fact that ISG aid to FPL is available as emergency assistance in the case of any outage of less than 100 mw. As we pointed out above, 12 of FPL's 24 generating units generate 75 mw or less. The emergency outage of any one of these units would automatically bring ISG aid to FPL in the event that FPL's own reserves and the reserves of the other members of the Florida Pool were not instantaneously available. It appears that this is at least one of the contingencies which an emergency assistance agreement contemplates.

FPL urges that the Commission should decline to exercise jurisdiction in this proceeding, stating that any transmission of interstate energy which may have been accomplished is *de minimis*, and that the exercise of Commission jurisdiction would subject FPL to most burdensome additional costs without serving the public interest.

Assuming, *arguendo*, that we have discretion, this is not a case where the Commission should decline to exercise its jurisdiction. The Commission has already determined that jurisdiction does not depend upon a finding of any particular volume or proportion of interstate energy flowing in a system and this position has been upheld in the courts. *Connecticut Light and Power Company* v. *Federal Power Commission*, 324 U.S. 515, 535–536 (1945); *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61 (1943); *Public Service Company of Indiana* v. *Federal Power Commission*, 375 F. 2d 100 (CA7–1967). Similarly, we do not believe that, where there are other benefits accruing to a company under the interconnected operating arrangements, the amount of energy flowing interstate should be decisive on the question of whether we ought to decline to exercise jurisdiction. Here the role played by FPL in the Florida Pool, in aiding Corp to interchange energy with Georgia and the other subsidiaries of Southern, and in the ISG is of greater significance than the actual volume of energy exchanged by it would ordinarily indicate. And this volume of energy, although constituting but a small percentage of FPL's total generating capacity,[6] is nevertheless not insubstantial.

In considering FPL's request that we decline jurisdiction here, the Commission cannot ignore the fact that information recently filed by FPL in its FPC Form No. 12 for 1965 shows that FPL's interchange of energy with other members of the Florida Pool was 300 percent greater in number of kilowatt hours in 1965 than in 1964. Nor can we ignore the record showing that the members of the Florida Pool, in considering their generating and transmission needs for 1970, have studied plans which contemplate stronger interconnections with the utilities in the Southern Company, to the extent of anticipating the capability of transfer of as much as 350,000 kw to 400,0000 kw with Southern. FPL's role in these future plans for growth and interconnection obviously is a vital and significant one. As the largest electric utility in the State of Florida, and as one of the major electric utilities in the United States, FPL's importance in insuring the increased reliability of interconnected power systems in Florida and in adjoining states is self-evident. We do not believe that the public interest will be served by any Commission ruling which would tend to inhibit FPL from a sound and efficient expansion of its participation in the Florida Pool and ISG interconnections. Yet FPL's request that we decline jurisdiction here because its past interstate transmission activities have allegedly been small, could, if granted, very well inhibit it from participating in future interconnection programs, and could conceivably cause it to restrict its present interconnection arrangements to its own detriment and to the detriment of other Pool members. Plainly, the public interest will not be served by this result.

The suggestion by counsel for FPL during the oral argument that we should wait to consider assuming jurisdiction until there is an actual complaint by a wholesale customer, either existing or potential, misconceives the broad statutory design which Congress had in mind in enacting Parts II and III of the Federal Power Act. Congress sought not only to give this Commission exclusive jurisdiction over wholesale sales in interstate commerce, but, in addition, to supplement local regulations at the federal level in such areas as accounting, interlocking directorates, mergers and consolidations, and the promotion of interconnection and coordination of the nation's facilities for the generation, transmission and sale of electric energy. None of these latter objectives depend upon the extent of wholesale sales or the percentage of interstate transmission in any particular case. The independent importance of these regulatory activities was spelled out in detail by the Commission, in light of the Act's legislative history, almost 20 years ago in the *Connecticut Light and Power* case, *supra.* FPL has presented no argument which would now persuade us to a contrary conclusion.

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[6] We do not find satisfactory record support for FPL's claim that the interstate energy which flows into its system is no more than 1/7000 of one percent of the total energy delivered to FPL's customers. FPL apparently arrived at this figure by assuming that the power flowing across the state line from Georgia could be traced to the Sanford-Turner interconnection between Corp and FPL. In so doing FPL ignored the effect of commingling of energy from different sources, and also ignored the fact that Georgia power may flow into its system over three other high voltage tie-lines.

We agree with the Examiner that FPL will not be subjected to any unduly burdensome costs by our requirement that it keep its accounts in accordance with the Commission's Uniform System of Accounts for Public Utilities. Although FPL asserts that it will incur more than $500,000 additional annual costs if it must comply with the Commission's accounting requirements, its contention is unsupported on the record before us. With respect to reporting, FPL presently files this Commission's principal report forms, FPC Form No. 1, Annual Report, and FPC Form No. 12, Power System Statement, as required under Section 311, among other sections, of the Power Act. Nor should any substantial expense result from FPL's compliance with the Commission's accounting requirements. FPL presently keeps its plant accounts on an original cost basis and maintains its books of account in accordance with the NARUC (National Association of Railroad and Utilities Commissioners) system of accounts which are similar to those of the Commission's Uniform System of Accounts.

FPL's further assertion that it will incur an estimated 4 to 6 million dollar expense to complete an initial plant inventory required by the Commission's Uniform System of Accounts is based upon indefinite and conjectural evidence, and plainly reveals a definite misunderstanding of what is required of it under the Commission's regulations. Thus, FPL's estimate of these costs erroneously includes the sum of approximately $3,200,000 for an aerial map survey of its system, when the Commission's requirements do not require such an aerial survey. Also, it appears that FPL's cost predictions are based upon costs incurred by other electric utilities in compiling their plant inventories for the Commission's regulatory purposes in prior years. The studies made by these other companies are not comparable because their plant accounts were not kept pursuant to a uniform system of accounts at that time. On the other hand, FPL has been keeping its plant accounts on an original cost basis at least since 1951, and was required to make a complete reclassification of its plant accounts on an original costs basis by the Securities & Exchange Commission as of January 1, 1942. FPL's witness at the hearing admitted that to his knowledge FPL had not contacted any members of this Commission's accounting staff to obtain information concerning the requirements of complying with the Commission's Uniform System of Accounts, and also conceded a lack of knowledge as to whether or not FPL's reclassification studies accepted by the Securities & Exchange Commission in 1942 and the years thereafter would be accepted by the Commission. In this connection, it may be added that FPL apparently gave no weight to the fact that the Commission's auditing procedures are designed to avoid any unnecessary overlapping or duplication of state commission audits, and that joint federal and state audits are encouraged. In light of the foregoing circumstances, we find that the Examiner correctly concluded that it would not be burdensome for FPL to conform to the Commission's accounting requirements.

To the extent that FPL seeks exemption from the Commission's accounting requirements because its transmission of energy is predominantly intrastate, we deem it appropriate to restate our language in *The Connecticut Light and Power Company*, 6 FPC 104, 108 (1947), as follows:

> The legislative history of the Act shows, furthermore, that it was anticipated in Congress that the federal accounting requirements would apply to utilities predominantly engaged in local business subject to State regulation. Thus, Representative Cole, explaining the bill in the House on behalf of the House Committee, said (79 Cong. Rec., Part 9, p. 10384):
>
> > A uniform system of accounting is established, and because of the demand therefor and the admission on the part of most everyone that such is advisable, the provisions therefor will very likely be required of companies now subject to State regulation because of a small fraction of their business being under the Federal Commission. We have thought this advisable because it is most necessary to have uniformity in accounting as well as depreciation instead of 48 different methods. This provision will be followed, in my judgment, by the adoption by the State Commission of such uniform method as the Federal Power Commission will prescribe.

Significantly, Congress rejected efforts to amend the Act to exempt utilities regulated by a state commission, and the legislative debates at that time showed that the proponents of the Act regarded it essential that the Commission possess the power to get accounting information under a unified accounting system, regardless of the fact that a reporting utility might also be subject to state regulation. In light of this background, we do not find that the public interest will be served by exempting FPL from compliance with the Commission's accounting requirements.

*The Commission further finds:*

(1) Florida Power & Light Company (FPL) is a corporation organized and existing pursuant to the laws of the State of Florida.

(2) FPL owns and operates facilities, among others, for the transmission of electric eenrgy transmitted from points of generation in the States of Georgia and Florida to points of consumption outside the State in which it is generated, which facilities are in addition to, and do not include, facilities used for generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter.

(3) FPL is, therefore a public utility within the meaning of that term as used in Section 201 of the Federal Power Act and subject to the jurisdiction of the Commission.

(4) FPL, as a public utility under the Federal Power Act, should be ordered, *inter alia*, to file with the Federal Power Commission original cost statements in the manner provided in Section 120.3 of the Commission's Regulations under the Federal Power Act and Electric Plant Instruction No. 1 of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act.

(5) The exceptions of FPL and of the Florida Commission to the Examiner's initial decision should be denied.

*The Commission orders:*

(A) Within 60 days after the issuance of this order, FPL shall file with the Federal Power Commission original cost statements in the manner provided in Section 120.3 of the Commission's Regulations under the Federal Power Act and Electric Plant Instruction No. 1 of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, and shall comply with all requirements of the Commission's Regulations under such Act.

(B) The decision of the Presiding Examiner, as supplemented above, is adopted as the decision of the Commission.

(C) The exceptions to the Examiner's decision are denied.

Commissioner Carver, *joined* by Commissioner O'Connor, *dissenting.*

CARVER, *Commissioner*, joined by O'CONNOR, *Commissioner*, *dissenting:*

By eschewing the opportunity to let this case turn on the exercise of a discretion in the Commission not to take jurisdiction, and elect-ing to have it turn on the "commingling" test of jurisdiction, the Commission has made it necessary for me to dissent.

This dissent does not stem from sympathy for the Florida Power & Light Company, whose arguments against being regulated, particularly in the matter of the impact of conformance with the Uniform System of Accounts, affront the legislative purpose. Congress did not saddle consumers with "unnecessary" costs, when it directed the Commission to set up a uniform accounting system.

Nor is my dissent based upon a belief that the Commission has misread or misinterpreted the thrust of certain recent judicial pronouncements on the "commingling" theory. The cases cited are distinguishable on the facts, but the thrust is in the direction the Commission has taken.

The vice I find in the Commission's decision, which prevents me from joining in its statement, is that its adoption of the commingling theory as a test for jurisdiction *per se*, interprets the Federal Power Act to have a reach beyond that which I find in the statute.

The Federal Power Act is today found to grant to the Commission jurisdiction over *any* company which generates electric energy in the form of alternating three-phase 60-cycle current, if that company is interconnected and electromagnetically synchronized with any other generating source producing electric energy in the same form in another State.

More than 90% of the Nation's electric generating capacity is interconnected in this fashion. The only major exception is the electric generation of Texas, which is interconnected within Texas but not with out-of-Texas systems. Such a test for jurisdiction writes out of the statute the intrastate and industrial exceptions to coverage under the Act, and in doing so objectionably usurps a prerogative of the Congress.

From its outset, the case was tried on the narrow issue of jurisdiction—a so-called "straight status case." Florida Power & Light Company has an interconnection with Florida Power Corporation, at a point 180 miles from the Georgia state line. The decision turns on the theory that at this interconnection, any "flow" of energy from Florida Power Corporation to Florida Power and Light Company may not be assumed to be Florida-generated energy from Florida Power Corporation's generating system, but rather to be interstate in origin by reason of the interconnection by the Florida Power Corporation with out-of-Florida generating sources. The Florida Power Corporation system is said to be "permeated" or commingled with out-of-Florida energy.

The facts of interconnection are uncontroverted. Aided by the engineering testimony of the Staff witnesses Jessel and Jacobsen, the

Staff's case for the ultimate jurisdictional fact of electric energy in Florida Power & Light Company's system being transmitted in interstate commerce is this "permeation" or "commingling." The Examiner neatly summarized:

> The cause and effect relationship in electric energy occurring throughout every generator and point on the Georgia, Corp and Florida systems constitutes interstate transmission of electric energy by, to, and from Florida. It is the electromagnetic unity of response of Florida, Corp, Georgia and other interconnecting systems that constitutes the interstate transmission of electric energy by Florida." (Ex. Dec., *infra*, p. 568.)

In undertaking to temper the impact of the Examiner's forthrightness (a forthrightness conforming to the theory upon which Staff's case was submitted), the Commission turns to Exhibit 18 as supporting a Commission finding (as opposed to an Examiner's finding) that interstate energy reached the system of Florida Power & Light Company. But that exhibit (or any exhibit) shows no more than that "commingled" energy reached the Florida Power & Light Company system. This assumes the fact in issue, and thus begs either the question of jurisdiction or the question of substantiality or both. No staff exhibit purports to depart from the assumptions made to support the "commingling" theory.

The Examiner fairly recognized that "commingling" is only a theory. But he found that the theory of commingling was sound and proved, and that its proof obviated tracing.

If commingling obviates tracing, then the reach of the Commission's jurisdiction is plenary. Furthermore, it has become plenary in 1967, while the act was passed in 1935 and has not been changed by Congress (in respects material here) since.

The Supreme Court in *Connecticut Light and Power Co.* v. *F.P.C.*, 324 U.S. 515, at 515, credited the Congress with determining that

> federal jurisdiction was to follow the flow of electric energy. (at 529)

But is federal jurisdiction to follow the changes in the theories which are devised by company or Commission engineers to describe a still-mysterious phenomenon? For myself, I cannot accept the premise that the "commingling" theory can change the law as radically as to eliminate two explicit exceptions to our jurisdiction.

Turning to the cases cited by the majority, most of these cases involved jurisdiction over wholesale sales, not jurisdiction *per se*. The two "straight status" cases in the Supreme Court reports—*Connecticut Light and Power Company* v. *F.P.C.*, 324 U.S. 515 (1945), and *Jersey Central Power & Light Co.* v. *F.P.C.*, 319 U.S. 61 (1942)—do not support the approach used here, and the Commission's opinion today is directly contrary to the latter's statement (at 319 U.S. 72) that "mere connection determines nothing." Today's decision has connection determining everything.

The cases cited in the Commission's opinion, although sales cases not solely status cases, carry the process of interpreting legislative language *almost* as far as the Commission goes today. The final step may be a short one, but short or not, it is legislative.

The discussion which asserts that the commingling or electromagnetic synchronism test for jurisdiction under Section 201 of the Federal Power Act supports the public interest in the expansion and extension of interconnection arrangements for greater service reliability is not persuasive. I fully agree that interconnections serve the objective of reliability, and that reliability is strongly in the public interest. But with the present near universality of interconnections, it would seem that the Commission's opinion would as likely lead to present connections being broken as to new connections being established or existing connections strengthened.

Congress may have intended that the provision of Section 201(b) which states that the Commission "shall not have jurisdiction *** over facilities used *** only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter" was to have a diminishing effect with the passage of time; but I do not think that Congress can be said to have intended this diminution to proceed to the vanishing point. It reaches that point for all practical purposes when the Commission adopts the commingling test for determining interstate flows after virtually the entire electric generating capacity of the United States is interconnected under electromagnetically synchronous conditions.

My doubts that the statute should be so read are reinforced when the diminished meaning of Section 202 following the application of the commingling test is considered.

The stated purpose of Section 202 was to assure an abundant supply of economical energy by *voluntary* interconnection of facilities. If jurisdiction inexorably follows interconnection, the nonjurisdictional utilities cannot retain any aspect of their independence once they agree to interconnect. Impregnation is indivisible. Such a reading of Section 202 is hardly conformable to its general spirit, and is inconsistent with the legislative history, of this part of the Act.[1]

Another consideration, not related to the scope of the statute, suggests itself. The Commission's adoption of the commingling theory conceivably could deny to a small utility remote from its supplier's generation the opportunity to object to wheeling charges on a mileage or rolled-in cost basis, as opposed to cheaper charges based on a displacement theory. The far-reaching commingling theory adopted today could prove embarrassing to the Commission, which presumably would not want to have one rule for establishing jurisdiction, and another for regulating under it.

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[1] Senate Report No. 621 on S. 2796, 74th Cong., 1st Sess., at p. 49, May 13, 1935; and House Report No. 1318 on S. 2796, 74th Cong., 1st Sess., at p. 27, June 24, 1935.

I do not wish to be misunderstood. From the standpoint of it being the largest electric utility in Florida, on the basis of its being nationally ninth in revenues, fourteenth in plant investment, and sixteenth in energy sales, and from the standpoint of the upward trend in its energy transactions with interconnected companies, Florida Power & Light Company probably ought to be under Federal Power Commission regulation.

But our adjudicative responsibilities do not turn upon what the law ought to be, but upon what it is. Counsel for the company candidly admitted that the law as it is quite possibly would apply to one of his company's wholesale sales. Such a result might be equally offensive to my reading of the statute, but it would have the merit of resting squarely upon decided cases. We elected to plow new ground with a straight jurisdictional approach, and absent square authority, I find the result to constitute too great a stretching of our charter. I would reverse the Examiner, and let a jurisdictional finding wait for a sale case.

## INITIAL DECISION

## OF THE PRESIDING EXAMINER IN INVESTIGATION TO DETERMINE JURISDICTION

(Issued July 12, 1966)

### TABLE OF CONTENTS

Page

I. Introduction ........ 560

II. The Central Issue: Does Florida Transmit Interstate Electric Energy? ........ 561

III. The Florida System: Independence and Interdependence ........ 561

- A. Florida's Independence ........ 562
- B. Florida's Interdependence ........ 562
- C. The Florida, Corp, Georgia Relationship ........ 563
- D. Florida—A Member of the Interconnected Systems Group ........ 563
- E. Conclusion ........ 564

IV. The Electromagnetic Unity of Florida, Corp, Georgia and the Transmission of Interstate Electric Energy by Florida ........ 564

V. Quantity Immaterial ........ 568

VI. Tracing: Its Limitations and Preferred Method ........ 568

VII. Florida Not Within Local Distribution Exemption ........ 570

VIII. Exercise of Jurisdiction ........ 572

IX. Conclusion ........ 573

## I

## INTRODUCTION

WENNER, *Presiding Examiner:* Florida Power & Light Company (Florida) engages in the generation, transmission, and distribution at wholesale and retail of electric energy throughout major portions of Florida. The essential issue in this case is whether Florida is a public utility—whether the Commission has jurisdiction over it under Section 201 of the Federal Power Act. This depends on whether Florida operates facilities for the transmission of electric energy in interstate commerce.

If the Commission has jurisdiction over Florida, Florida is required to maintain its accounts according to the Commission's Uniform System of Accounts; therefore, whether Florida should so maintain its accounts is in issue in this proceeding. But there is not in issue in this proceeding any rate matter. However, if Florida is found to be a public utility, the Commission would have jurisdiction in other proceedings with respect to the rates of such of its sales for resale which are in interstate commerce, and also with respect to compelling its physical interconnection with other systems. But decisions on these matters are not in issue in this proceeding.

## II

## THE CENTRAL ISSUE: DOES FLORIDA TRANSMIT INTERSTATE ELECTRIC ENERGY?

The first and indeed the major question in this proceeding is: Does Florida transmit interstate electric energy? There are many significant factors which bear on this issue, but these two are major:

(1) Florida is interconnected with Florida Power Corporation (Corp), another Florida electric utility company. Substantial amounts of electric power are interchanged between Florida and Corp.

(2) Corp is interconnected with Georgia Power Company (Georgia), which operates in Georgia. Substantial amounts of power are interchanged between Corp and Georgia.

So the question becomes: Is electric energy transmitted between Georgia and Florida via Corp?

We turn to the details of the problem of interstate transmission, considering first the particular interchanges themselves and the interrelationships among the various participants, because these may cast light on the nature of the interstate transmission, if any, and then the question of interstate transmission itself.

## III

## THE FLORIDA SYSTEM: INDEPENDENCE AND INTERDEPENDENCE

Florida provides electric service to the east coast of the state, except for the Jacksonville area and that of five other municipal systems. As of December 1964,[1] it operated ten steam-electric generating plants located in various parts of its system. These are interconnected by a transmission grid of 2,500 miles, of which 1,400 miles operate at high voltage, 115 kv or above. Florida has a net dependable generating capacity of 2.8 million kw.

The generation of electric energy over Florida's system is controlled by a computer in its dispatching office at Miami. Loads on Florida's system constantly change from moment to moment as machines and lights are turned on and off by customers. The computer arranges for load changes to be met by adjusting generation at the various units on Florida's system so that energy to meet the new load is provided in the most economic way. These computer assignments are based on the respective generating unit efficiencies, transmission line losses, and fuel costs at various plants. Under this computer control Florida's system is operated as a unified system, not as a collection of connected plants.

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[1] Unless otherwise noted, all figures are approximate and are for the calendar year 1964.

Corp and Tampa Electric Company, both electric companies in the state and which are interconnected with Florida, also operate similar automated systems.

### A. *Florida's Independence*

Florida's generating capacity is installed essentially to serve its own loads. In the main, it has adequate generating capacity to meet its own loads. Its plans are based on its continuing, in the main, to supply its own needs in the future.

### B. *Florida's Interdependence*

Florida has relationships and is interconnected with four other Florida electric systems, Corp, Tampa Electric Company (Tampa), Orlando Utilities Commission (Orlando), and the City of Jacksonville (Jacksonville).

Florida, Corp and Tampa form the Florida Operating Committee with Jacksonville and Orlando as associate members. The Committee meets several times a year to consider mutual problems relating to the interconnected operation of the systems.

The following amounts of electric energy were exchanged during 1964 between Florida, on the one hand, and the other members of the Florida Operating Committee, on the other.

| Transferred from electric utility system | Transferred to electric utility system | Amount transferred kilowatt-(hours) |
|---|---|---|
| Florida Power & Light Co | Florida Power Corp | 107,642,000 |
| Florida Power Corp | Florida Power & Light Co | 61,598,000 |
| Florida Power & Light Co | Tampa Electric Co | 43,081,000 |
| Tampa Electric Co | Florida Power & Light Co | 59,404,000 |
| Florida Power & Light Co | City of Jacksonville | 17,268,000 |
| City of Jacksonville | Florida Power & Light Co | 18,181,000 |
| Florida Power & Light Co | Orlando Utilities Commission | 21,431,000 |
| Orlando Utilities Commission | Florida Power & Light Co | 59,876,000 |

As indicated on the table above, power between Florida and each of the other members of the Committee was exchanged in both directions. The electric energy so interchanged by Florida totaled three percent of its net generation of 12 billion kwh.

The energy is interchanged on either a scheduled or inadvertent basis. Scheduled transactions take place after discussion between the dispatchers for each system and are based on the needs of one part and the availability of power on the part of the other, on a "when, as and if basis." During the system peak the five members of the Florida Operating Committee exchange information daily on the amount of spinning reserves each expects to carry. The purpose of the energy interchanges is to take care of temporary needs. There are no economy sales (sales by a company that can produce lower cost power to a higher cost producer) because fuel costs are similar for all members.

There are also inadvertent power flows, the free flow of power that occurs between two interconnected systems when there is a difference between the angle of the voltage or the magnitude of the voltage on one side of the point of interconnection compared to the other. Inadvertent interchange of energy includes intentional interchange energy resulting from the use of frequency bias as well as unscheduled interchange resulting from human or equipment errors.

Interchanges of power are measured, netted, and payment is made for the balance at regular intervals.

In its 1965 Form 12 report Florida lists its reserve capacity at 656,000 kw, 411,000 kw from its own system, and in addition, from the other members of the Florida Operating Committee, "Reserve capacity usually available amounts to 245,000 kw. This is spinning reserve instantly available for emergencies from Florida Power Corporation, Tampa Electric Company, City of Jacksonville and Orlando Utilities Commission." Florida also contributes to the joint reserves of the other members of the Florida Operating Committee.

The arrangements regarding reserves available from the other members of the Florida Operating Committee are not written or firm guarantees. On many occasions the reserve available from each of the members of the Florida Operating Committee has been less than 80% of its allocated share.

The Committee also coordinates the overhaul and maintenance schedules of the five systems so that too many large units are not out of service at a time when they may be needed.

The coordination of reserves, overhaul and maintenance by the Florida Committee is by mutual agreement. The agreements are oral and informal, and are recorded in the minutes of the Committee meetings. There are no sanctions for non-compliance. There is no centralized directorate or administrative nucleus to direct operations. Some other interconnected systems also operate in a similar manner.

### C. *The Florida, Corp, Georgia Relationship*

Corp is interconnected with Florida as well as two other members of the Florida Operating Committee, Tampa and Orlando. Corp is also interconnected with Georgia. Thus Corp is interconnected with Florida on the south and with Georgia on the north.

Georgia is a subsidiary of The Southern Company (Southern), a holding company whose other subsidiaries are Gulf Power Company (Gulf) which operates in northwestern Florida, Alabama Power Company (Alabama), and Mississippi Power Company. Corp is interconnected with Gulf, and Gulf is interconnected with Georgia and Alabama. Pursuant to an agreement between the subsidiaries of Southern, on the one hand, and Corp, on the other, during the summer Corp makes available 100,000 kw to the Southern subsidiaries and during the winter the Southern subsidiaries make available to Corp 100,000 kw. During 1964 Georgia delivered to Corp 97 million kwh and Corp delivered to Georgia 82 million kwh. In addition 3.9 million kwh were wheeled for the Southwestern Power Administration over Southern's lines across the Georgia-Florida state line to Corp. For many days, including peak load periods, there was a flow in both directions during a 24 hour period over the Corp-Georgia interconnection.

Georgia is also interconnected with Duke Power Company, Tennessee Valley Authority, Southeastern Power Administration and others. These systems operate in states beyond Georgia.

### D. *Florida—A Member of the Interconnected Systems Group*

Florida and the other members of the Florida Operating Committee are members of a multi-state electric network, the Southeast Region of the Interconnected Systems Group (ISG) which covers the southeastern and central portions of the country. Florida operates in synchronism with the 140 members of ISG and is ready to assist them or to receive assistance from them in case of emergency. Thus during a 580 mw generator loss by a midwestern utility Florida contributed 8 mw to ISG.

Electric energy transmitted between Corp and Georgia passes through Fort White, a point at the northern part of Corp's system. If power flow exceeds 100 mw at this point the ties open, cutting off the power. Hence assistance between Florida and ISG via the Corp-Georgia interconnection cannot be relied on where the need exceeds 100 mw. However 12 of Florida's 24 generating units generate 75 mw or less. An outage of any of these units would lead to almost instant ISG assistance to Florida. However, no such limitation appears applicable to assistance from ISG via the Florida-Corp-Gulf-Georgia interconnections.

### E. *Conclusion*

Florida is operated, to a large extent, as an independent company. It is also an operation which is interconnected with and interdependent with other Florida electric companies. In turn one of these other companies, Corp, is interconnected with and interdependent with Georgia which in turn is interconnected with and interdependent with a network of electric systems operating in many states. The situation and relation of Florida to these other systems provides the background for the transmission of energy among them.

## IV

## THE ELECTROMAGNETIC UNITY OF FLORIDA, CORP, GEORGIA, AND THE TRANSMISSION OF INTERSTATE ELECTRIC ENERGY BY FLORIDA

Under Section 201(c) of the Act electric energy is transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof within the United States. Granted that electric energy is transmitted between Florida and Corp, and between Corp and Georgia, the question is posed: Is electric energy transmitted to Florida from Georgia or to Georgia from Florida? The answer depends on what constitutes interstate transmission of electric energy.

Electric power on Florida, Corp, and Georgia and all other interconnected systems is supplied as alternating current at a frequency of 60 cycles. Interconnected synchronous operation, or "parallel operation," as that term is used in the industry, requires that the frequency of each system be in synchronism with that of all others in the interconnection. Two or more electric systems cannot (except under special and rare conditions) operate together unless they are in synchronism. This means that the current pulses on these systems, and thus the frequency, coincide exactly; not approximately, but exactly. Birmingham is served by Alabama which is interconnected with Georgia which is interconnected with Corp. Miami is served by Florida which is interconnected with Corp. The frequency of the pulses is exactly the same in Miami and Birmingham, and if it changes to a new value in Birmingham, then it changes to exactly that same value in Miami. The speed of every electric generator on every electric system in an interconnected group is irrevocably locked to the same frequency. A variation in one affects all.

The line bias with frequency control is the technique used to maintain frequency at 60 cycles on interconnected electric systems operating in synchronism, such as Florida, Corp and Georgia, and is also used to match generation with net system load. Bias is the automatic shift of a system's interchange schedule with frequency. The basic function of modern frequency and tie line control is that of regulating total generating output in each individual system or control area in such a way that the total generation will match continuously and as closely as possible the total system load, including scheduled load on interconnection ties.

Frequency never remains at 60 cycles—it is always a bit above or a bit below, because the loads are always fluctuating and the generation follows to keep the system load and generation in balance and as close to 60 cycles as possible. Although deviations in frequency almost always occur due to the impossibility of matching instantaneous load variations with rapid changes in generation, it is important for system operation to keep these frequency deviations as small as possible.

The magnitude of the change in instantaneous generation and frequency on an interconnected system will tend to diminish as the distance from the point of load change increases. But a load change at any point will have an effect on the instantaneous generation and frequency at every point on the interconnected system. These effects can be calculated.

Each generating unit when operating at a speed corresponding to 60 cycles has mechanical energy of rotation stored in its rotating components which is automatically convertible to electric energy when there is a decrease in frequency and a corresponding drop in revolutions per minute. When a load is added suddenly to an electric system or a generator is taken suddenly out of service, assuming no other changes occur, every generating unit operating on the Florida system and all connected systems almost instantly experience a loss in speed, so that the mechanical energy of rotation of every generator is converted to electric energy. The sum total of the electric energy so obtained through the conversion of mechanical energy of rotation supplies part of the new load or takes the place of some of the lost generation. Thus every connected generator on the entire interconnected system contributes energy to the interconnected system to supply part of the additional load and so maintain the balance between total system generation and total system load. Following this initial reaction, the governor on each generator reacts in accordance with its sensitivity, rate of response, and position in relation to its "dead band" (the area within which a governor will not respond to a change in load), causing additional steam to be applied to the turbines and to speed up the generators thus producing more energy, which in turn increases the speed of all generators, bringing frequency back to normal. As these events occur, the tie line bias of all the systems is operating so that the net interchange of each system with its neighbors will tend to return to the former prearranged level. Because of the tie line bias of each system, the particular system on which the increase actually occurred will eventually increase generation to supply the additional load and the other systems will correspondingly reduce their temporarily increased electric generation.

Changes in load at various points on all systems are constantly occurring, producing changes in frequency throughout all interconnected systems. The resulting changes in generation of electric energy throughout the interconnected systems reduce the range of the changes in frequency and thus improve the efficiency of operation of the interconnected systems. Thus unnecessary speed-up or slow-down in generating equipment is minimized; clocks keep more perfect time; precision industrial operations are improved; and oscillations between generators are reduced. This is accomplished by the dispersal of the immediate effects of load changes throughout the electromagnetically interlocked generators of the interconnected systems. One of the reasons for the interconnection of systems is the ability of such systems to promote stability in generation and frequency by dispersing the effects of load changes throughout larger systems. These effects result in a constant swapping and redistribution of loads borne by the various generators throughout interconnected systems.

These changes are worked through quickly. But they occur. And they occur continuously and frequently.

Thus the modern electric system, such as that of Florida and the systems with which it is interconnected, is an ever varying one; loads and generation are constantly varying from moment to moment as lights are switched on and off and as workmen increase or decrease the power in the machines they use in myriad operations.

For any particular loading on an electric system or interconnected set of systems all of the electric energy produced by all the generating units is delivered to the common coordinated and integrated modern transmission system from which all of the customers are supplied. Variations in load at any point cause changes throughout the interconnected electric systems because of the interdependence of the generating sources. All generating units connected to a common network experience the same changes in frequency and all clocks connected to such a network experience these changes in frequency and maintain the same time.

No attempt is made to control flows in individual lines because the electric energy flows are determined by the electric characteristics of the network. Only the net of flows over all interconnections on a system is controlled by increasing or decreasing generation so as to maintain interconnection schedules and to maintain frequency as closely as possible at 60 cycles. The changes in generation are in response to changes in load and the effects of tie line bias on all the interconnected systems.

The electrical and other characteristics of an electrical network affect the transfers of electric power and energy at points of connection with other interconnected electric systems. The moment to moment distribution of electric power and energy in an electric network is determined automatically by (1) the electric characteristics, namely, resistance, inductive reactance and capacitative reactance of the electric lines and electric facilities; (2) the locations and power outputs of generating units in operation; and (3) the locations of and amounts of power taken by the electric loads. The electric loads on an electric system vary from moment to moment and so does the total generation. Consequently, the transfers of electric power at points of connection of Florida with other interconnected electric systems vary from moment to moment.

Electric systems, such as Florida, Corp, Georgia, and others normally have no control over the actual transfers of electric power and energy over any particular transmission interconnection with another electric system if there is more than one interconnection. Similarly electric utilities, such as Florida, Corp, Georgia, and others, normally have no control over the actual transfers of electric power and energy with any particular electric system if there are interconnections with two or more electric systems, which are also directly or indirectly connected. In each instance this is due to the free flow characteristics of the electric networks. All that is normally controlled by each system is the net of flows over all its interconnections which is brought about through the effects of tie line bias, frequency changes, governor reactions and generator responses thereto.

Thus there is a free flow of power and energy throughout the electric network in which Corp and Georgia participate. There is also a free flow of power and energy throughout the electric network formed by Corp and Florida. And there is a free flow of energy among Georgia, Corp, and Florida.

All 140 members of the ISG operate in parallel. All are interlocked electromagnetically and maintain the same frequency. Each member renders automatic assistance to the other in times of emergency. As previously noted, Florida can receive from or contribute to ISG up to 100 mw. The network formed by all the members of ISG and the tie line bias and frequency control used by member systems provide mutual assistance in maintaining standard 60-cycle frequency, thereby improving the efficiency of operation of all.

Electric systems operating together on an interconnected basis, such as Florida, Corp and Georgia, schedule the amounts of power and energy transactions among themselves on an hour-to-hour basis and each sets on its own net interchange controller the net amount of scheduled transactions. Each system measures the actual transfers at each point of connection with another electric system and the differences between scheduled transactions and actual transfers are balanced out as soon as practical. In order that the technique may work efficiently all interconnected systems must do their share in adhering to schedules as closely as possible.

In actuality there are substantial differences between the scheduled and actual transactions. The reason is that none of the connected electric systems including that of Florida, Corp, and Georgia has any control over the actual transfers of power at each point of interconnection because of the free flow characteristics of electric networks. All that can be controlled on each system having more than one interconnection with other electric systems is the net of transfers into or out of its own system or area. This is particularly so with respect to the electric system of Florida because some of the electric systems to which it is connected have connections among themselves.

An electric utility system such as Florida is essentially an electro-mechanical system to which all operating generators on the interconnected network are interlocked electromagnetically. This means that electric generators, under ordinary operating conditions run either at exactly the same speed or at speeds which will result in a frequency of 60 cycles. No operating generator can change its speed by itself as long as it operates connected to the network. All generators connected to the same network must follow each other as to speed and frequency whenever there is a change in frequency, and the frequency of all interlocked generators is always exactly the same.

The electric systems of Florida and all other interconnected systems are essentially alike as to electrical, electromagnetic and electromechanical characteristics. Because they are alike, it is possible to have presently existing interconnected operations on a very large scale, extending from the Rocky Mountains to the Atlantic Ocean and from the Canadian to the Mexican border.

For all practical purposes electric energy in the form of alternating current is generated as needed because it cannot be stored in electrical form. At any point in time such electric energy is delivered where needed on a system at a speed of about 186,000 miles per second. An interconnected electric system such as that of Florida, Corp, Georgia, and the others to which it is interconnected, automatically requires at constant frequency that at every moment total generation always be equal to total load plus losses; otherwise, there is an unbalance causing a change in frequency. An electric system cannot supply one connected load and not supply another connected load. For any particular loading on an electric system, all of the electric energy produced by all of the generating units is delivered to the common transmission network which acts as a single unit from which all of the customers are supplied. For any change in load or generation, there is an electrical effect through a change in voltage and current at all generators and at all loads.

If a housewife in Atlanta on the Georgia system turns on a light, every generator on Florida's system almost instantly is caused to produce some quantity of additional electric energy which serves to maintain the balance in the interconnected system between generation and load. If sensitive enough instruments were available and were to be placed throughout Florida's system the increase in generation by every generator on Florida could be precisely measured.

Nobody can say for certain just how electricity is really transmitted. The analogy to a flow of water is metaphorical only. Does an electron move from one end of a thousand mile wire to another? Or is there only interaction between neighboring electrons or between fields of force? The answer is not important for legal purposes. The significant factors are that Florida's generators are interlocked electromagnetically with Georgia's and that in consequence, Florida's generators increase their production of electric energy almost instantaneously and automatically in response to increases in load on Georgia's system thereby contributing in some measure to the system supply which meets the increased Georgia load, reducing the variation in frequency on the Georgia system, and increasing its efficiency of operation. Without the Florida response the electric reactions on Georgia and the interconnected systems would be different.

The cause and effect relationship in electric energy occurring throughout every generator and point on the Georgia, Corp and Florida systems constitutes interstate transmission of electric energy by, to, and from Florida. It is the electromagnetic unity of response of Florida, Corp, Georgia and other interconnecting systems that constitutes the interstate transmission of electric energy by Florida.

## V

### QUANTITY IMMATERIAL

It is settled law that the quantity of interstate energy transmitted is immaterial in determining whether there is interstate transmission for jurisdictional purposes, *Hartford Electric Light Company* v. *F.P.C.*, 131 F. 2d 953, 960 (CA2), cert. denied, 319 U.S. 741. *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472, 478 (CA7-1952), cert. denied, 345 U.S. 934.

## VI

### TRACING: ITS LIMITATIONS AND PREFERRED METHOD

In the preceding portion of this decision it has been found that Florida transmits interstate electric energy. The conclusion is based on cause and effect relationships that are interstate in scope. No effort is made to trace the path of the interstate electric energy.

The nature of electric energy is not clearly understood. It is sometimes described as a field of force or as a jostling motion of electrons. Where electric energy from two sources has combined, there is no way to identify a particular portion with a particular source. Electric energy is unlike a liquid, gas or solid, whose path can be traced by methods such as, dyeing one stream of the liquid, chemical analysis, tracing radioactive atoms.

In certain simple situations it can be proved that electric energy, or at least an undivided part of the whole, comes from a particular source. Thus a load of 100 kw, C, is supplied from a bus[2] which receives 50 kw from each of two sources, A and B. Plainly the load is receiving electric energy from both A and B. The proof here is logical or mathematical. It does not involve knowledge or application of the physics of electric energy. That the energy at C comes from both A and B is both a sufficient and a necessary explanation. However in modern electric systems such as those of Florida, such methods of logical analysis of the raw data are not applicable. There is too much commingling from different sources in the buses, and the systems are so complex that there are many possible sources which could account for the amount of electric energy at any point. In these circumstances, several explanations may be sufficient but none may possess the uniqueness necessary for proof.

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[2] The ordinary three phase bus is a set of three bars which conduct electric energy and to which incoming circuits lead and from which outgoing circuits extend. It is used as a junction to which supplies of electric energy are joined or from which electric energy is divided to supply different loads.

The principal parties to this proceeding presented their case by attempting to prove or disprove the interstate transmission of electric energy between Florida and Georgia by tracing the flow of electric energy. The Staff relied on the commingled method, Florida on the systems study method. On the basis of the commingled method, it can be proved that electric energy is transmitted between Florida and Georgia; on the basis of the systems study method the contrary follows.

What both Staff and Florida do by their respective methods is transpose the complex dynamism of modern alternating current electric systems into simplified models on the basis of numerous assumptions. The crucial difference between the two methods lies in their treatment of a bus and what happens in the bus.

Florida's system studies method treats the bus as having physical dimensions. It replaces each three phase alternating current bus structure by a single conductor bus and uses the point to point tracing principles of direct current circuits with static power sources and with steady state power flows. The method treats the power flow through the bus as constant in value and direction, on the basis that balanced three phase power under steady state conditions is constant in value and direction from instant to instant, and even with some unbalance, the instantaneous three phase power varies only slightly from the average value and does not change direction. Thus in the systems studies method, the flow of electric energy instant by instant in the bus is treated as constant in magnitude and as being in a single direction. This result is achieved by taking the algebraic sum of the magnitudes and directions of each of the three power phases and using the combined value of three phase power as representative of the power flow.

This unidirectional combined value of three phase power is purely a mathematical concept. In reality there is no such thing as three phase power. The physical reality is that there are power flows in two directions in each of the three phases, and that both the direction and magnitude of the power in each phase change from instant to instant. The use of a combined power value moving in a single direction to represent all the power being supplied to the bus conceals the dynamics of the physical phenomena. And it is the physical reality that is of significance for purposes of this case.

Staff's method of treating the bus as a point, a tank or a reservoir, where all the energy supplied to the bus is commingled, more nearly represents an actual three phase electric power system because it, in effect, allows for the differences, instant to instant, among the electrical characteristics of sources of power supply and loads, and provides for power contributions to electric loads more nearly as they actually take place. It furnishes a more satisfactory explanation for purposes of this proceeding because it is more in consonance with the physics of transmission of alternating current than the combined constant value unidirectional assumption underlying the system study method.

The systems studies method is used for certain types of engineering studies. For these purposes the use of unidirectional combined values is satisfactory because all that is desired is a mathematical answer regardless whether it is in consonance with the physical dynamics of the situation. The combining of magnitudes and directions is similar to the technique of averaging. Both are meaningful methods of representing certain aspects of data. Thus average per capita income can be a useful concept. But on the basis of average per capita income, there are no poor in the United States. The average is not fully descriptive of the reality, which is a range of incomes from poor to rich. Similarly, the combining of magnitudes and direction of each of the three phases does not provide an adequate description of the dynamic phenomena that occur in a three phase bus which serves as a junction for numerous three phase lines.

If tracing is required then the commingled method with its assumptions reflects the physical reality of alternating current systems better than the systems studies method with its assumptions. On the basis of the commingled method of treating the bus as a point, a tank or a reservoir, the transmission of electric energy between Georgia and Florida via Corp can be demonstrated.

## VII

### FLORIDA NOT WITHIN LOCAL DISTRIBUTION EXEMPTION

Interstate transmission of electric energy as used in the Federal Power Act was expected to encompass the almost instantaneous electromagnetic reaction throughout interconnected systems. It was realized that generation at any point on interconnected interstate electric systems would tend to result in an electric response throughout connected facilities even to the final consumer. But Congress did not desire to extend federal regulation to local distribution systems. It therefore included in Section 202(b) an exemption from federal jurisdiction over facilities used in local distribution. But for this exemption FPC's jurisdiction over the interstate transmission or sale of electric energy would have extended to the local wholesale purchaser and his distributing system. In other words a physical test was first adopted as the standard for interstate electric transmission. But because of the recognition that such a physical standard would by virtue of the technology of electric transmission tend to extend FPC jurisdiction over all interconnected local distribution facilities, Congress found it necessary to limit FPC's jurisdiction by superimposing a legal test: FPC shall not exercise jurisdiction over local distribution facilities.

The reach of interstate transmission is indicated by the Supreme Court in *Connecticut Light & Power Company* v. *F.P.C.*, 324 U.S. 515, at 529–530 (1945):

> * * * This bill [The genesis of Part II of the Federal Power Act] came before Congress as prepared by the staff of the Commission, couched largely in the technical language of the electric art. Federal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental, test. Technology of the business is such that if any part of a supply of electric energy comes from outside of a state it is, or may be, present in every connected distribution facility. Every facility from generator to the appliance for consumption may thus be called one for transmitting such interstate. By this test the cord from a light plug to a toaster on the breakfast table is a facility for transmission of interstate energy if any part of the load is generated without the state. It has never been questioned that technologically generation, transmission, distribution and consumption are so fused and interdependent that the whole enterprise is within the reach of the commerce power of

> Congress, either on the basis that it is, or that it affects, interstate commerce, if at any point it crosses a state line * * *

Aware of the reach of interstate transmission of electric energy, the Court explained that Congress had imposed an express limitation on FPC's jurisdiction in the form of a separate legal test (324 U.S. at 531):

> * * * To define the scope of state controls, Congress employed terms of limitation perhaps less scientific, less precise, less definite than the terms of the grant of federal power. The expression "facilities used in local distribution" is one of relative generality. But as used in this Act it is not a meaningless generality in the light of our history and the structure of our government. We hold the phrase to be a limitation on jurisdiction and a legal standard that must be given effect in this case in addition to the technological transmission test * * *

What is the scope of the local distribution exemption? Local distribution begins where high voltage bulk power is reduced to low voltage for the wholesaler who distributes to the local consumer. Thus the Supreme Court stated in *United States* v. *Public Utilities Commission of California*, 345 U.S. 295 at 316:

> * * * The sales were made in California but the facilities supplied "local distribution" only after the current was subdivided for individual consumers * * *

The same application of the local distribution test was made in *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472 (CA7-1952), cert. denied, 345, U.S. 934, where the Court stated (197 F. 2d at 477):

> * * * The question is essentially, when does interstate commerce transportation end and where do the local distribution facilities first become operative. We have seen that the power is transmitted from state to state. In the Wisconsin operation, it comes to Stiles in that state by means of the main transmission line from Michigan and there a transformer reduces it in voltage. It then proceeds in transmission over the lower voltage line to still other points where again the voltage is reduced; eventually it comes to the plants of the wholesalers. Thus the interstate transmissions of electric energy continues from Michigan through the transformers in reduced voltage to the wholesaler; upon delivery to him local distribution begins when he resells. His sales and distribution at retail are clearly local in character, and constitute only local distribution; but at no point before delivery to him has been completed, has interstate transmission terminated. In other words "facilities used in local distribution" means facilities used for making resale and distribution to consumers, jurisdiction over which is left to the states * * * We think there is no ground for the position that local distribution includes any transmission occurring before the wholesaler who resells at retail is reached * * *

Florida has a transmission grid of 2,500 miles, of which 1,400 are high voltage, 115 kv or above. There are 1,100 miles of transmission facilities used for local distribution. The 1,400 miles of high voltage lines are anterior to distribution to local consumers and are not "facilities used in local distribution."

In *Connecticut Light & Power Co., supra*, the facility of Connecticut Light on which jurisdiction was claimed to rest was a step-down transformer at the Company's substation at Bristol, an isolated segment of its system. The distribution facilities from the Bristol substation to individual consumers were concededly within the local distribution exemption. A connecting system which received some interstate power had an extension which supplied the power to the Bristol substation which reduced the voltage prior to distribution to the consumers. The step-down transformer in the substation was the only facility of Connecticut Light that did not plainly fall within the local distribution exemption. The Supreme Court remanded the case to the Commission to determine whether the transformer performed the last stage in interstate transmission or the first stage in local distribution. In the instant case there is no such problem. Florida's 1,400 miles of high voltage transmission lines are used to transport bulk power and are not part of the facilities used to distribute the power to local consumers. Florida therefore has facilities which are not within the local distribution exemption, and which transmit interstate electric energy.

## VIII

### EXERCISE OF JURISDICTION

As a public utility under the Act, Florida would be required to keep its accounts in accordance with the Commission's Uniform System of Accounts for Public Utilities. Florida presently files the Commission's principal reports, FPC Form No. 1, Annual Report, and No. 12, Power System Statement. It maintains its books of account in accordance with the NARUC (National Association of Railroad and Utilities Commissioners) system of accounts which are similar to those of the Commission's Uniform System of Accounts. Florida reclassified its plant accounts for the Securities and Exchange Commission in 1942 on an original cost basis. It has been keeping its accounts on that basis at least since 1951. So conforming to the Commission's accounting requirements would not be burdensome.

A second factor is the Commission's jurisdiction over the interconnections of public utilities. A facet of this problem is illustrated by the situation regarding the Intervenor City of Clewiston.

Clewiston is three miles from Florida's Ranch-Fort Myers transmission line. Clewiston owns and operates its own distribution plant. It presently purchases its electric supply from U.S. Sugar Corporation, which in turn purchases Clewiston's requirements from Glades Electric Cooperative, Inc. Glades purchases its power from Florida three miles from Clewiston. Clewiston seeks to purchase directly from Florida. Direct service to Clewiston by Florida would save the City $100,000 per year.

In 1952 Clewiston and U.S. Sugar sought jointly to obtain power for the summer months. Florida stated its willingness to sell power to U.S. Sugar, but was not willing to permit the power to be resold to Clewiston.

In 1954 Clewiston requested direct service from Florida at wholesale. This was refused on the grounds that this was contrary to company policy, that it would not sell to a municipal at wholesale except in the case of furnishing an emergency supply. As an alternative, Florida proposed to lease Clewiston's distribution system and sell directly at retail within the City. This counterproposal was rejected by the City Commission.

In 1957 Clewiston again requested that Florida sell directly to it. Florida stated in essence that Clewiston's request was rejected, but that it would be willing to buy out the system and sell at retail within the City. The City turned down this counter-offer, and, as a result, was unable to purchase power from Florida. At this conference, Florida restated the same company policy as was stated in the 1954 negotiations.

In 1962 Clewiston again requested a direct power supply from Florida. Florida stated, in essence, that its policy had not changed and it would therefore not sell to Clewiston at wholesale.

In July 1965 Clewiston requested a direct wholesale supply from Florida at the same rates as Florida was using for its sales to Glades, the rural electric cooperative which was reselling Florida power to U.S. Sugar which in turn was selling to Clewiston. Florida stated in essence that the company policy had not changed, and that it would not sell to Clewiston.

In a September 1965 conference Florida's president stated in essence that the company policy regarding selling power to municipalities had not changed, but could change. He would propose to Florida's Board of Directors that if the City of Clewiston would agree to have a referendum to see if the City would sell its distribution system to Florida or should continue to operate it, and the City Commission would be bound by this referendum, Florida would sell directly to the City if the referendum vote were in favor of City ownership. Florida also stated, in essence, that the rates would not necessarily be as low as the rates to Glades, and that this would have to be worked out. Clewiston informed Florida that if Florida would submit a written proposal it would be presented to the City Commission for appropriate action.

If Florida be held to be a public utility, the Commission has power under Section 202(b) of the Act to direct that it interconnect with Clewiston if, after hearing, it finds this to be in the public interest and not an undue burden upon Florida. Clewiston in Docket No. E-7243 filed an application for such action; however on July 6, 1966, 36 FPC 17, the Commission granted a motion by Clewiston to dismiss this proceeding on the grounds that pursuant to an agreement among Glades, Clewiston and U.S. Sugar, Glades will sell directly to Clewiston at rates representing a reduction of $140,000 from the rates Clewiston formerly paid to U.S. Sugar. This result apparently satisfies Clewiston's immediate objectives. But it does not dismiss the matters and principles raised by Clewiston in the instant proceeding. A finding of jurisdiction herein would enable the Commission to take action with respect to similar problems if they should arise and if such a step should be found appropriate.

Another aspect of the interconnection problem concerns Florida's participation in ISG and its interconnection with 140 electric utility systems throughout the southern and central United States. All these systems operate in parallel and are interlocked electromagnetically. All are interdependent to some extent. The Northeast Power Failure of 1965 suggests the reach of such interdependence. It is expedient that FPC's exercise of jurisdiction which it is otherwise found to possess under the Act be in consonance with the reach and realities of modern interconnected electric systems.

## IX

## CONCLUSION

It is further found and concluded:

(1) Florida Power & Light Company, a corporation organized and existing pursuant to the laws of the State of Florida, owns and operates facilities, among others, for the transmission of electric energy transmitted from points of generation in the States of Georgia and Florida to points of consumption outside the State in which it is generated, which facilities are in addition to, and do not include, facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter.

Florida Power & Light Company is, therefore, a public utility within the meaning of that term as used in Section 201 of the Federal Power Act and subject to the jurisdiction of the Commission.

(2) Florida Power & Light Company, as a public utility under the Federal Power Act, is obligated, *inter alia*, to file with the Federal Power Commission original cost statements in the manner provided in Section 120.3 of the Commission's Regulations under the Federal Power Act and Electric Plant Instruction No. 1 of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act.

## ORDER

WHEREFORE, *It is ordered* that within ninety days from the date of this decision, Florida Power & Light Company comply with all requirements of the Commission's Regulations under the Federal Power Act, including the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act.

SEYMOUR WENNER,
*Presiding Examiner.*

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MICHIGAN GAS AND ELECTRIC COMPANY, DOCKET NO. E-7327

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued March 20, 1967)

Michigan Gas and Electric Company (Applicant) on December 8, 1966, filed an application seeking authority pursuant to Section 203 of the Federal Power Act to acquire the electric generating plant and electric distribution system of the Village of Constantine, Saint Joseph County, Michigan (Village).

Applicant is incorporated under the laws of the State of Michigan with its principal place of business at Three Rivers, Michigan, and is engaged in the electric and gas utility business in southwestern Michigan. Applicant operates a local electric distribution system in segments of seven counties in Michigan. Over 95% of Applicant's electric requirements are purchased from nonaffiliated utilities and the balance is generated in three hydroelectric plants owned and operated by the Applicant.

The Village owns and operates a distribution system serving 454 customers within its boundaries. Normally, its energy requirements are supplied by an internal combustion electric generating plant of 3335 kw capacity in six units. In 1965, the peak load of this system was 1,249 kw. Retail sales of energy amounted to 5,153,996 kwh. The Village has no wholesale sales.

On September 12, 1966, the voters of the Village approved the sale of its electric facilities to Applicant for $391,000. For that amount, Applicant will obtain the Constantine internal combustion electric generating plant and distribution system serving 361 residential customers, and 93 commercial and industrial customers. Applicant proposes to use the internal combustion electric generating plant for peak shaving and standby purposes.

According to the application there will be no increase in rates to any customer now served by Constantine as a result of the transaction and many of the customers will realize immediate reductions in rates. Information supplied by Applicant shows that 158 residential customers would have reductions ranging from 8 percent to 16 percent and 203 customers would have no change in rates. Sixty-seven commercial customers would each receive an average rate reduction of 50 cents per month.

These facilities have an estimated original cost of $397,142 and an estimated accumulated provision of depreciation of $156,619, for an estimated original cost depreciated of $240,523. These amounts for plant and accumulated depreciation are subject to further review by the Applicant and any changes will be shown in the journal entries which the Applicant is required to file. On the basis of estimated original cost depreciated of $240,523, an acquisition adjustment of $150,477 ($391,000 minus $240,523) will be created.

Applicant proposes to account for any acquisition adjustment by equal annual charges to the appropriate operating expense account (Account 406, Amortization of Electric Plant Acquisition Adjustments) over a period of 12 to 15 years. In support of its proposed accounting Applicant directs attention to various benefits to be realized by the Village's consumers from the acquisition. However, they have not made a showing that the expenditures in excess of original cost depreciated, in themselves, are of benefit to the acquiring company's consumers. Under these circumstances our regulations and established practice contemplate that such excess will be charged off below the line. Therefore any acquisition adjustment to be created should be eliminated by a debit to Account 435, Miscellaneous Debits to Surplus.

Applicant represents that the proposed acquisition will result in more reliable service for the citizens of Constantine than the service provided by the Village which has been unreliable due to the failure and breakdown of the Village's electric generating facilities and which has necessitated frequent reliance upon the Applicant to provide electric energy to the Village's customers. Applicant also represents that following the acquisition the distribution system of the Village will be rebuilt so as to provide a modern and efficient distribution system with substantial reduction in the number of poles.

On April 15, 1966, the Village requested that the Federal Power Commission take jurisdiction and render an order requiring Indiana & Michigan Electric Company or Fruit Belt Electric Cooperative to furnish an interconnection source of power with the Village to provide a source of additional or standby emergency power. That matter was docketed in Docket No. E-7283.

By letter dated February 28, 1967 the Village advised the Commission that upon our approval of the acquisition of its facilities by Applicant, the Village proposes to withdraw its request in Docket No. E-7283.

Written notice of the application has been given to the Governor of the State of Michigan and to the Public Service Commission of that State. Notice was also published in the Federal Register on January 5, 1967 (32 F.R. 60), stating that any person desiring to be heard or to make any protest with reference to the application should on or before January 27, 1967, file with the Federal Power Commission petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant owns and operates facilities which may be facilities for the transmission of electric energy in interstate commerce and it may be a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of the Vil-

lage, another person within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

*The Commission orders:*

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees and shall eliminate any acquisition adjustment by a debit to Account 435, Miscellaneous Debits to Surplus.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP67-208

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued March 20, 1967)

On January 24, 1967, Panhandle Eastern Pipe Line Company (Applicant), filed in Docket No. CP67-208 an application and supplement thereto filed February 28, 1967, pursuant to Sections 7(b) and (c) of the Natural Gas Act for permission and approval to sell certain facilities and to abandon in place certain other facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation and sale of natural gas in interstate commerce, all as more fully set forth in the application and supplement thereto.

Applicant seeks permission and approval (1) to abandon by sale to Greenfield Gas Company, Inc. (Greenfield Gas) the terminal 1607 feet of 6-inch and 1813 feet of 4-inch parallel lateral pipelines and the existing Greenfield metering and regulating station (except certain equipment) presently serving Greenfield Gas and (2) to abandon in place approximately 30 feet of 4-inch pipeline extending north from the terminus of the portion sold Greenfield Gas to the point of interconnection with a new measuring and regulating station. Applicant will remove and retain certain equipment presently located at the measuring and regulating station.

Applicant seeks authorization to construct and operate a measuring and regulating station on the Greenfield lateral, at Applicant's own expense, on a site now under lease at the terminus of that portion of the Greenfield 6-inch lateral which Applicant will continue to own following the sale and transfer of facilities to Greenfield Gas and to construct and operate a 4-inch pipeline approximately 240 feet in length interconnecting the new measuring and regulating facilities to Applicant's 4-inch lateral.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 16, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement, and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application and supplement filed in this proceeding are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities, as hereinbefore described and as more fully described in the application and supplement, filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, and as more fully described in the application and supplement filed in this proceeding is granted.

(B) A certificate of public convenience and necessity is issued to Applicant in this proceeding, authorizing the construction and operation, of facilities, as hereinbefore described, all as more fully described in the application and supplement, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities authorized in paragraph (B) above shall be constructed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within twelve months of the date on which this order issues.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, PROJECT NO. 2456

### ORDER ISSUING LICENSE (MAJOR)

(Issued March 20, 1967)*

Application has been filed on April 3, 1964, and supplemented on April 23 and August 10, 1965, respectively, by Public Service Company of New Hampshire (Applicant) of Manchester, New Hampshire, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2456, known as Ayers Island Hydroelectric Plant, located on the Pemigewasset River in Belnap and Grafton Counties, New Hampshire, and in the Towns of Bristol, Bridgewater, Ashland and New Hampton, New Hampshire.

The project was constructed in 1923–1924 with an installed capacity of 6,000 kw. In 1929 the tailrace was deepened and in 1931 the crest of the dam was raised 21 feet. With the installation of 8 foot high flashboards, a head of 80 feet was achieved. There has been no project construction since the 1935 amendment to the Act.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project conditions in the interests of fish and wildlife resources and recreation, as set forth in attached Form L–3.

The Department of Health, Education, and Welfare has advised that the Public Health Service is presently studying the need for flow regulation storage for water quality control in connection with proposed multi-purpose reservoirs on the Pemigewasset River or its tributaries and that the Department will inform us of the results of such study. To date no further communication has been received from the Department. In Article 32 herein we are providing for future determination by the Commission with respect to water releases for water pollution abatement.

Applicant filed as part of its application an Exhibit R describing recreational uses of the project for present and future fishing and boating in the project reservoir. According to the April 23, 1965 supplement to Exhibit R, Applicant is committed to convey to the State of New Hampshire for recreational development parts of two tracts of lands designated as Parcel No. 27 and Parcel No. 41. Parcel 27 contains 131 acres of which 15 acres lie within the project boundary and extend about 1½ miles along the project reservoir shoreline. Parcel 41 contains 18 acres of which 7.5 acres lie within the project boundary and extend about 1/3 mile along the project reservoir shoreline. The said parcels are shown on the Exhibit R map filed as part of the application for license and designated as Exhibit R, Sheet 1 of 1 (FPC No. 2456-64) entitled "Ayers Island Hydroelectric Project—Recreational Use Plan." In the circumstances, we are herein approving the Exhibit R and authorizing the conveyance to the State of New Hampshire of the portions of the lands within Parcels 27 and 41 situated within the boundary of Project No. 2456.

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*See order issued May 9, 1967 granting rehearing, etc.

The Pemigewasset River is located in the Northern Merrimack River Basin extending from central New Hampshire into Massachusetts. The Pemigewasset flows into the Merrimack River which, in turn, flows into the Atlantic Ocean 30 miles northeast of Boston. The Ayers Island Project is located on the Pemigewasset 14 miles above its mouth and 131 miles above the mouth of the Merrimack. Applicant's constructed Eastman Falls Project No. 2457, application for license for which has been filed, is located on the Pemigewasset one mile above its mouth. There is ample historical evidence of the extensive use of the Pemigewasset River by shallow draft boats and canoes, and for the floating of masts and loose logs and rafting of logs from the upper reaches of the river above Project Nos. 2456 and 2457 to saw mills located downstream on the Pemigewasset and as far downstream on the Merrimack River as Lowell, Massachusetts. Such commerce took place commencing during the 1700's and ended only with the depletion of the forests along the Pemigewasset and Merrimack Rivers.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830) the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

*The Commission finds:*

(1) The Pemigewasset River is a navigable water of the United States.

(2) Ayers Island Hydroelectric Plant, Project No. 2456, is located upon navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of New Hampshire, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefore, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 11,200 horsepower, and the amount of annual charges, based

on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(8) The following described filings comprising Exhibit R conform to the Commission's rules and regulations and should be approved as part of this license:

Exhibit R, consisting of two typewritten pages entitled "Exhibit R—Proposed Plan for Recreational Purposes," and two letters designated as R-6 and R-7, filed April 3, 1964;

Exhibit R, consisting of a supplemental letter filed April 23, 1965;

Exhibit R, Sheet 1 of 1 (FPC No. 2456-64) a map entitled, "Ayers Island Hydroelectric Project—Recreational Use Plan," filed April 3, 1964.

(9) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

*The Commission orders:*

(A) This license is hereby issued to Public Service Company of New Hampshire (Licensee) of Manchester, New Hampshire, under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of Ayers Island Hydroelectric Plant, Project No. 2456, located on the Pemigewasset River, navigable waters of the United States, in Belnap and Grafton Counties, New Hampshire, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Ayers Island Hydroelectric Plant, Project No. 2456, consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project: such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2456-1) General Location Map

Exhibit K: 9 sheets (FPC Nos. 2456-2 through -10) Detailed Map of Project Area

(ii) project works as follows: (1) a reinforced concrete Ambursen type dam about 699 feet long with a spillway 267 feet in length and topped by 8 feet of flashboards; (2) spillway section about 72 feet high in maximum section and the top of the flashboards at elevation 453.33 U.S.G.S., backing up a pond of approximately 800 acres; (3) three steel penstocks 58 feet long and 10 feet in diameter; (4) a powerhouse containing three vertical shaft water wheels, operating under a gross head of 80 feet, attached to three generators rated at 2,800 kw each; (5) the three 2.3 kv lines 262 feet long to the substation; (6) six transformers and associated facilities rated at 15,400 kva; and (7) appurtenant electrical and mechanical facilities.

| Exhibit L (sheet No.) | FPC No. | Title, Ayers Island hydroelectric plant |
|---|---|---|
| 2A (Rev. No. 1 (Nov. 10, 1964)) | 66 | Plan and elevations of dam. |
| 3 | 13 | Plans and elevations. |
| 38 | 48 | Details of typical intermediate spillway buttress. |
| 39 | 49 | Details of deck slabs. |
| 46 | 56 | Crest gate spillway details. |
| 53 | 63 | Hinged flashboard details. |

*Exhibit M:* Consisting of 11 pages entitled "General Description of Mechanical and Electrical Equipment" filed in the Commission April 3, 1964.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised September 1, 1966) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (36 FPC 971), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

*Article 30.* The Licensee shall pay to the United States the following annual charge, effective April 1, 1962:

> For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 11,200 horsepower.

*Article 31.* Licensee shall cooperate with State and local agencies and individuals and shall provide such lands as may be necessary for the development and maintenance of access areas and roads and such other facilities needed for full recreational utilization by the public of project lands and waters consistent with the terms of the license and the operation of the project.

*Article 32.* The Commission reserves the right to determine at a later date what water releases should be made for water quality control and to require releases for such purpose, after notice and opportunity for hearing.

*Article 33.* The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project works.

(D) The Exhibit R designated and described in finding (8) above is hereby approved as part of this license.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(F) Public Service Company of New Hampshire is hereby authorized to convey to the State of New Hampshire certain lands within the project boundary as proposed in the aforementioned Exhibit R of the application for license for development thereon by the State of public recreational facilities, subject to recognition in the instrument of conveyance of the rights and responsibilities of Public Service Company of New Hampshire and its successors and assigns in Project No. 2456, and a covenant or condition ensuring that the use of such lands will not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use in accordance with paragraph (C) of the Commission's Order No. 313 issued December 27, 1965, 34 FPC 1546 (18 CFR 2.7(C)).

(G) Public Service Company of New Hampshire shall file with the Commission copies of the conveyance referred to in paragraph (F) above within 30 days of its execution accompanied by a print of the appropriate Exhibit K map or maps marked to show accurately the extent and location of the conveyed lands.

(H) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64-34

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 20, 1967)

On February 6, 1967, Transwestern Pipeline Company (Petitioner) filed in Docket No. CP64-34 a petition to amend the certificate of public convenience and necessity issued by the Commission on December 16, 1963, 30 FPC 1526, as amended by the orders of December 4, 1964, 32 FPC 1403, December 27, 1965, 34 FPC 1560, and December 14, 1966, 36 FPC 1040. The certificate authorizing Petitioner to sell and deliver to the Pacific Lighting Service and Supply Company (Pacific Lighting) up to 460,000 Mcf of natural gas per day on an annual basis was for a limited period ending April 1, 1967, or until the commencement of any new service resulting from the order accompanying Opinion No. 500 issued July 26, 1966 in Docket No. CP63-204, *et al.*, 36 FPC 176, whichever date is earlier, all as more fully set forth in the petition to amend.

In Docket Nos. CP63-204 and CP64-91, Transwestern proposed to increase deliveries to Pacific Lighting Service and Supply Company from 345,000 Mcf per day to 640,000 Mcf per day. During the pendency of the Docket No. CP63-204, *et al.* (California), proceedings Transwestern has received, in subject Docket No. CP64-34, the following authorizations to increase deliveries to Pacific Lighting to the date listed or commencement of deliveries of volumes authorized in Docket No. CP63-204, *et al.*, whichever first occurred:

| Order | Issued | In Mcf per day | | Term |
|---|---|---|---|---|
| | | Incremental increase | Total | |
| Original | Dec. 16, 1963 | 65,000 | 410,000 | Nov. 1, 1965 |
| First amendment | Dec. 4, 1964 | 20,000 | 430,000 | Dec. 31, 1965 |
| Second amendment | Dec. 27, 1965 | 10,000 | 440,000 | Dec. 31, 1966 |
| Third amendment | Dec. 14, 1966 | 20,000 | 460,000 | Apr. 1, 1967 |

In the instant petition, Petitioner seeks to extend its period of authorization until June 1, 1967 or until the commencement of any new service resulting from Opinion No. 500 issued July 26, 1966, in Docket No. CP63-204, *et al.*, whichever date is earlier, since Petitioner has been unable to complete its proposed facilities on time due to delays in receiving equipment and adverse weather conditions.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 18, 1967 (32 F.R. 3073). No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and public convenience and necessity require that the Commission's order issued December 16, 1963, in Docket No. CP64–34 be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued December 16, 1963, in Docket No. CP64–34 is further amended so as to authorize Petitioner to continue to deliver natural gas to Pacific Lighting until June 1, 1967 or until initiation of the service authorized in Docket No. CP63–204, *et al.*, whichever date is earlier.

(B) In all other respects said orders shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED NATURAL GAS COMPANY, DOCKET NO. CP67–214

### FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT AND ACCEPTING FOR FILING NOTICE OF CANCELLATION OF SERVICE AGREEMENT

(Issued March 20, 1967)

On January 27, 1967, United Natural Gas Company (Applicant) filed in Docket No. CP67–214 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Prospect Oil and Gas Company (Prospect), Chicora, Pennsylvania, all as more fully set forth in the application.

Applicant has been selling natural gas to Prospect under its Rate Schedule G-1, for resale by the latter to consumers in Butler and Armstrong Counties, Pennsylvania, pursuant to FPC authorization in Docket No. G–2230.

Applicant states that it has acquired all of the gas distribution plant of Prospect and the former Prospect customers are now being served directly by Applicant. This acquisition has eliminated the need for the sale of natural gas to Prospect for resale to consumers and Applicant proposes to eliminate this sale and remove its measurement facilities associated therewith.

Applicant has received approval of the Pennsylvania Public Utility Commission for the acquisition of Prospect's facilities and continuation of retail service to Prospect's customers. The acquisition was consummated as of November 21, 1966.

Applicant filed with the Commission, January 27, 1967, a Notice of Cancellation of its service agreement with Prospect.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on March 16, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1943, in Docket No. G–328 (3 FPC 959).

(2) The service and facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid service and facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that Applicant's Notice of Cancellation of its current service agreement with Prospect, be accepted for filing effective as of the date of issuance of this order.

*The Commission orders:*

(A) Permission for and approval of the abandonment of the service and facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant.

(B) Applicant's Notice of Cancellation of its service agreement with Prospect, is accepted for filing to be effective on the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## DALPORT OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. CS66-15, ET AL.

### ORDER GRANTING RELIEF

(Issued March 21, 1967)

The small producers listed in the Appendix have requested reinstatement of certain rate schedules and related rates involving sales in the *Permian* area. Prior to issuance of the small producer certificates each of these producers had rates in effect which exceeded the applicable area base rate ceiling determined in Opinion Nos. 468 and 468-A, 34 FPC 159, 1068. These producers request relief in conformity with the Commission order issued February 6, 1967, in *Rodman and Late, et al.*, Docket No. CS66-48, *et al.*, 37 FPC 281.

For the reasons set forth in the *Rodman* order, we will permit the producers involved here to reinstate effective as of the effective date of such certificates their above ceiling rates which were in effect subject to refund prior to the issuance of such certificates. These reinstated rates, however, will be subject to rejection, as of the date of reinstatement, in the event the *Permian* court stay is dissolved or the moratorium provisions in Opinion Nos. 468 and 468-A are upheld ultimately upon judicial review. The collection of such reinstated rates is also subject to the refund provisions of paragraph (D) of Opinion No. 468 as well as the refund provisions of the applicable suspension proceeding.

*The Commission orders:*

(A) The rate schedules and the related rates set forth in the Appendix are reinstated as of the respective dates of the applicable small producer certificates.

(B) The rates reinstated by paragraph (A) above are subject to rejection as of the effective date of reinstatement, in the event the *Permian* court stay is dissolved or the moratorium provisions in Opinion Nos. 468 and 468–A are upheld ultimately upon judicial review. The collection of such rates is also subject to the refund provisions of paragraph (D) of Opinion No. 468 as well as the refund provisions of the applicable suspension proceeding.

APPENDIX

| Producer (1) | Rate schedules to be reinstated (2) | Small producer certificate docket (3) | Rate to be reinstated (4) | Date of small producer authorization (5) |
|---|---|---|---|---|
| Dalport Oil Corp., (operator), et al | 1 | CS66-15 | [1] 15.5599 | June 14, 1966 |
| | 2 | CS66-15 | [2] 15.5599 | Do. |
| | 4 | CS66-15 | [1] 15.5599 | Do. |
| | 5 | CS66-15 | [1] 15.5599 | Do. |
| | 6 | CS66-15 | [1] 15.5599 | Do. |
| | 7 | CS66-15 | [1] 15.5599 | Do. |
| | 8 | CS66-15 | [1] 15.5599 | Do. |
| | 9 | CS66-15 | [1] 15.5599 | Do. |
| | 10 | CS66-15 | [1] 15.5599 | Do. |
| | 11 | CS66-15 | [1] 15.5599 | Do. |
| W. L. Todd, Jr., et al | 1 | CS66-16 | [3] 15.5599 | Do. |
| E. E. Reigle, doing business as Richmond Drilling Co. (operator), et al | 2 | CS66-84 | [4] 17.0 | July 20 1966 |
| French M. Robertson (operator), et al | 1 | CS66-67 | [5] 14.60576 | Apr. 22, 1966 |

[1] Subject to refund in Docket No. G-20397.
[2] Subject to refund in Docket No. G-20398.
[3] Subject to refund in Docket No. G-20415.
[4] Subject to refund in Docket No. RI60-38.
[5] Subject to refund in Docket No. RI61-244.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## LAKE SHORE PIPE LINE COMPANY,
## DOCKET NO. CP67–163

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 21, 1967)

On December 12, 1966, Lake Shore Pipe Line Company (Applicant) filed in Docket No. CP67–163 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act as implemented by Section 157.7(b) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction, during the 12-month period following the issuance of certificate authorization, and operation of certain natural gas facilities, all as more fully set forth in the application.

By the instant application, Applicant seeks authorization to construct and operate lateral and other field facilities necessary to enable it to take into its system natural gas purchased from independent producers thereof which may become available in the general area of Applicant's system.

The total estimated cost of Applicant's proposed construction will not exceed a maximum of $150,000, with no single project exceeding a cost of $20,000. Applicant proposes to finance said costs from current working funds or by short term bank loans.

Because the total expenditure proposed exceeds the limitations prescribed by Section 2.58(a) of the Commission's Rules of Practice and Procedure, Applicant requests waiver thereof.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on March 16, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Lake Shore Pipe Line Company, an Ohio corporation having its principal place of business in Cleveland Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 205 issued February 15, 1951, in Docket No. G–1210, *et al.* (10 FPC 22).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Good cause has been shown for waiver of the cost limitations imposed by Section 2.58(a) of the Commission's Rules of Practice and Procedure, as amended.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period following the issuance of this certificate and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $150,000, with no single project to exceed a cost of $20,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Lake Shore Pipe Line Company, to construct during the 12-month period following the issuance of this certificate, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The cost limitations imposed by Section 2.58(a) of the Commission's Rules of Practice and Procedure are hereby waived in this proceeding.

(D) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(E) The authorization granted in paragraph (A) above is limited to construction during the 12-month period following the issuance of this certificate and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $150,000, with no single project to exceed a cost of $20,000.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NON-ACCEPTABILITY OF CONTRACTS BETWEEN INDEPENDENT PRODUCERS AND INTERSTATE NATURAL GAS COMPANIES CONTAINING CERTAIN PROVISIONS IN DAILY-CONTRACT-QUANTITY AND TAKE-OR-PAY FOR CLAUSES, DOCKET NO. R-199

## ORDER NO. 334-A

### CLARIFYING AND MODIFYING ORDER NO. 334

(Issued March 21, 1967)*

By order issued January 18, 1967 (37 FPC 110, 32 F.R. 865), the Commission amended Part 154, Subchapter E, of its Regulations by adding § 154.103 which prescribed limitations on provisions in rate schedules relating to a make-up period for taking prepaid gas, and amended §157.25 to provide for the rejection of applications for certificates of public convenience and necessity if a contract, executed after February 1, 1967, submitted in support of an application contained any make-up provisions proscribed by §154.103. Petitions and Applications for Reconsideration, Rehearing and Clarification and Motions for Stay were filed or joined in by Shell Oil Company, Pan American Petroleum Corp., Humble Oil & Refining Company, Mobil Oil Corp., Sinclair Oil & Gas Company, and Phillips Petroleum Company.[1]

The main objections of the producers are: (1) that a make-up period of five years is not required; and (2) to the limitation that the contract provide that the buyer should be permitted to receive "at no additional charge per Mcf" gas paid for but not taken at any time during a period of at least five years immediately following payment for such gas not taken. The producers argue that the burden imposed upon them if the five year make-up period is not changed is too harsh in that it does not take into consideration increases in costs over a period of time, the possibility of increased taxes, changes in Btu of the gas and potentially higher royalty payments which they might have to pay to royalty owners.

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*Published in the Federal Register on March 29, 1967 (32 F.R. 5257).

[1] Herein referred to jointly as "producers." These petitions and applications are being considered as motions for reconsideration and clarification because an application for rehearing does not lie on an order prescribing a rule.

We intend by the words "at no additional charge per Mcf" that the pipeline companies should not be required to pay an additional charge in order to obtain the extension of the make-up period to 5 or more years.[3] It would be appropriate for the pipeline purchaser to pay, or receive credit for, the difference between the rate when the make-up gas is taken and the rate at which the prepayment was made, depending upon whether the prepayment rate will be higher or lower than the subsequent rate at the time of make-up. In appropriate circumstance the contracting parties may deem it desirable to make the prepayment price the total price for the gas. Such an alternative is acceptable and we shall so provide. We shall revise § 154.103 as hereinafter provided.

In view of our action herein, we see no need to stay the effectiveness of our order, and, accordingly will deny the requests for stay.

In Order No. 334, we noted that each producer certificate which had been issued, conditionally, subject to the final outcome of Docket No. R-199 would be subject to the rule prescribed therein. We required that each of those producers file amendments to his rate schedules to reflect this rule. Some question appears to have resulted from the wording in that order. To clarify that portion of the order we shall make it clear that each producer whose certificate was conditioned to the final outcome of Docket No. R-199 shall file a contract amendment to his rate schedule to provide for a make-up period of at least five years where, under the contract, the pipeline purchaser is required to pay for the gas whether or not taken, *i.e.*, to make prepayments. No additional charge shall be made to the pipeline purchaser in order to obtain this provision in the gas sales contract. The time for filing such contractual amendment is extended to 30 days from the date of this order.

*The Commission orders:*

(A) The new § 154.103, prescribed by ordering paragraph (A) of Order No. 334 in this proceeding as an amendment to Part 154, Subchapter E, Regulations Under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations, is revised to read as follows:

> § 154.103 Limitations on provisions in rate schedules relating to make-up period for taking prepaid gas.
>
> Contracts for the transportation or sale of natural gas, subject to the jurisdiction of the Commission, executed after February 1, 1967, will be rejected if they contain provisions precluding buyer from receiving gas paid for but not taken at any time during a period of at least five years immediately following payment for such gas not taken, subject to contract provisions to protect against drainage. If the contract terminates before the end of the minimum five-year make-up period, a shorter make-up period, consistent with the time remaining under the contract will be permitted. The contract may provide that the prepayment price is the total price for the gas. In the alternative the contract may provide that where the price being collected under the contract has changed between the date that the gas was paid for but not taken and the date the gas is made-up, the make-up gas will be delivered at the price effective at the

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[3] Thus, if a contract may otherwise provide for a shorter time than five-year term, it would not be proper to apply a surcharge in order to extend that period to five years.

time it is delivered. If the price has decreased, the decrement will be set off against payments for other gas delivered under the contract and if the price has increased pursuant to the provisions of section 4 of the Natural Gas Act, any increase provided for the make-up gas should be subject to any rate order issued by the Commission in the appropriate rate action.

(B) This amendment shall be effective January 18, 1967 *i.e.*, the issuance date of Order No. 334.

(C) Within 30 days from the issuance of this order each producer whose certificate of public convenience and necessity was conditioned to the final outcome of Docket No. R-199 shall file a contract amendment to his rate schedule to provide for a make-up period of at least five years where, under the contract, the pipeline purchaser is required to pay for the gas whether or not taken, *i.e.*, to make prepayments. No additional charge shall be made to the pipeline purchaser in order to obtain this provision in the gas sales contract.

(D) The Motions for Stay of Order No. 334 are denied.

(E) To the extent not adopted herein, the Motions for Reconsideration and Clarification are denied.

(F) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-200 AND NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-219

### FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF FILINGS

(Issued March 24, 1967)

On January 31, 1967, Colorado Interstate Gas Company (Colorado) in Docket No. CP65-200 and on February 20, 1967, Northern Natural Gas Company (Northern) in Docket No. CP65-219, each filed applications to amend the Commission's order issued March 24, 1965, 33 FPC 608, in the respective dockets, by authorizing the construction and operation of additional natural gas facilities and the extension to April 1, 1969, of the exchange and delivery of up to 33,000 Mcf of natural gas per day by Colorado and Northern necessary for the sale of a like amount of natural gas by Colorado to Cabot Corporation, all as more fully set forth in the respective applications to amend.

The order of March 24, 1965, authorized Colorado and Northern to construct and operate natural gas facilities and to exchange up to 30,000 Mcf of natural gas per day necessary for the sale of gas by Colorado to Cabot. Northern was authorized to deliver up to 30,000 Mcf per day to Cabot at three separate delivery points in Carson and Gray Counties, Texas. Colorado was authorized to deliver like quantities of gas to Northern at an interconnection in Kearny County, Kansas. The project was authorized for a period ending March 24, 1967.

Applicants now propose (a) to extend the project for a period ending April 1, 1969, and (b) to increase maximum daily quantities of gas exchanged, sold and delivered to 33,000 Mcf. Further, Colorado proposes to install an additional skid-mounted 660 horsepower compressor unit at its existing Kearny station, and Northern proposes to install a 6-inch side valve for an additional delivery point for Cabot in Gray County.

Pursuant to an agreement, dated November 17, 1966, between Cabot and Colorado gas will be sold under the subject proposal at a rate of 18 cents per Mcf. Colorado and Northern have entered into an agreement, dated November 17, 1966, providing for the proposed revised exchange arrangement between the two companies.

The estimated costs of Colorado's and Northern's proposed facilities are $145,200 and $1,005, respectively, which costs will be financed out of working funds on hand. Colorado will reimburse Northern for its cost of facilities.

On February 23, 1967, Colorado and Northern filed revisions to their respective FPC Gas Rate Schedules X-23 and X-10 covering the subject proposal.

Due notice of the filing of the applications to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 15, 1967 (32 F.R. 2912) and March 2, 1967 (32 F.R. 3481). No protest or petition to intervene has been filed in these proceedings.

*The Commission finds:*

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued March 24, 1965, in Docket Nos. CP65-200 and CP65-219 be amended as hereinafter ordered.

(2) Public convenience and necessity require that the authorizations hereinafter granted be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(1), (c)(3), (c)(4), (f) and (g) of Section 157.20 of such Regulations.

(3) Colorado's and Northern's respective revised FPC Gas Rate Schedules X-23 and X-10 should be accepted for filing to become effective on the date this order issues.

*The Commission orders:*

(A) The Commission's order issued March 24, 1965, in Docket Nos. CP65-200 and CP65-219 is amended by authorizing the construction and operation of the proposed additional facilities and, for the period ending April 1, 1969, the exchange and delivery of up to 33,000 Mcf of natural gas per day by Colorado and Northern necessary for the sale of a like amount of natural gas by Colorado to Cabot, all as hereinbefore described and as set forth in the applications to amend in these proceedings.

(B) The authorizations granted in paragraph (A) above are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(1), (c)(3), (c)(4), (f) and (g) of Section 157.20 of such Regulations.

(C) The construction of the proposed facilities shall be completed and such facilities placed in actual operation by October 1, 1967.

(D) Colorado's and Northern's respective revised FPC Gas Rate Schedules X-23 and X-10 are accepted for filing to become effective on the date this order issues.

(E) In all other respects said order of March 24, 1965, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP65-102; ATLANTIC SEABOARD CORPORATION, DOCKET NO. CP65-122; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65-181; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, UNITED NATURAL GAS COMPANY AND NORTH PENN GAS COMPANY, DOCKET NO. CP65-182; UNITED FUEL GAS COMPANY, DOCKET NO. CP65-198

### ORDER DENYING APPLICATION FOR REHEARING AND MOTION FOR FURTHER ARGUMENT

(Issued March 24, 1967)

On February 23, 1967, Atlantic Seaboard Corporation, United Fuel Gas Company and Columbia Gulf Transmission Company (Columbia Companies) timely filed a joint application for rehearing of the Commission's Opinion No. 512 and accompanying order issued January 24, 1967, 37 FPC 118. By that order we granted the competitive application of Transcontinental Gas Pipe Line Corporation (Transco) to supply additional gas to Washington Gas Light Company (Washington), which supplies gas at retail in Washington, D.C. and vicinity and to Commonwealth Natural Gas Company (Commonwealth), which supplies gas to parts of Virginia.

The Columbia Companies request that, upon rehearing, the Commission enter a revised Opinion and order issuing to Atlantic Seaboard Corporation a permanent certificate and vacating so much of Opinion No. 512 and accompanying order as issues the certificate to Transco. The Columbia Companies also move, pursuant to Section 1.12 of our Rules, that further argument be ordered with respect to the basic questions of principle and policy involved in this proceeding. Transco, Washington and Commonwealth have filed answers in opposition to the request for further argument urging that we deny the motion.

We have reviewed the Columbia Companies assignments of error and the numerous arguments advanced thereunder. In our opinion, no useful purpose would be served to repeat each of those arguments here since they are essentially the same as those advanced in their briefs and rejected by us in the Opinion. No new facts or arguments are called to our attention which would be cause for granting rehearing or disturbing the original Opinion and order. There are, however, certain matters we desire to discuss briefly here.

The Columbia Companies argue that the Commission applied a single, mechanical test of "net market loss" in granting a certificate to Transco; a test that does not meet the requirement that the Commission use its expertise. Moreover, they say, the *Lynchburg* case[1] should not be read to require any such test.

This argument is without merit. In granting a certificate to Transco, based on the evidence of record, we evaluated the full range of the relevant public interest factors including the following as primary considerations:

1. The substantial benefits in the form of lower purchased gas cost that would accrue to Washington and Commonwealth as a result of purchasing part of their gas supplies from Transco.

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[1] *Lynchburg Gas Company v. Federal Power Commission*, 336 F. 2d 942 (CADC-1964).

2. The public interest benefits resulting from the introduction of competition afforded by the certification of Transco.

3. The contribution to the reliability of service to the areas in question by virtue of the introduction of a second supplier serving Washington and Commonwealth on a regular basis.

We also gave full consideration, as we must, to any relevant counterbalancing economic factors finding that, "While Seaboard would undoubtedly lose some load and would not show as high a rate of growth, we conclude that Seaboard has not proven that such a diversion of load would be detrimental to it and its customers to any significant degree. Furthermore, Seaboard ignores the possibility of off-setting sales elsewhere. Such a test is suggested in *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942, 947 (CADC)."[2]

Contrary to the argument advanced by the Columbia Companies, in reaching our decision, we did not rely solely on the fact that Transco, the second supplier, would be able to effect service to Washington and Commonwealth at cost savings or at rates lower than those companies would have to pay Seaboard for comparable service. This was but one factor to be considered. We relied primarily on the evidence of record which demonstrated that the benefits to the public to be realized by the desirability of competition, increased service reliability and lower cost of gas off-set any economic effect upon the Columbia Companies and their customers. Here, a second source of gas supply for Washington and Commonwealth is clearly in the public interest.

The Columbia Companies contend that we erred in failing to consider the question of whether certification of Transco to serve Washington and Commonwealth is in the long range interest of Transco and its present customers in view of the rapidly growing requirements of the New York-New Jersey area and the limited GSS capacity available on the Transco system.

The Columbia Companies are entirely correct in their assertion that the relevant considerations in deciding whether Transco is to be permitted to serve Washington and Commonwealth, are not only alleged detriment to the Columbia system and benefits, if any, to Washington, Commonwealth and their customers, but the effect, both short term and in the long run, that the new service would have on Transco and its customers. The record does show what the effect would be and, rather than establishing any detriment in the event that Transco is certificated, it demonstrates that Transco's customers may realize significant benefits. In this regard, the estimated incremental rate of return of the proposed service to Washington and Commonwealth in 1968 will be 8.71 per cent, as compared with a system-wide rate of return of 6.72 per cent in that year. Thus the impact on Transco's customers should be to lessen the rate burden as a result of this increased service. Moreover, the record shows that after this expansion to serve Washington and Commonwealth, Transco still will have available approximately 44,000 Mcf per day of storage capacity for its customers even if its Phase Two application in Docket No. CP65-181 is denied.[3]

Grant of the Columbia Companies' request for further argument would be unwarranted. This case has been fully briefed and oral argument has been heard.

*The Commission further finds:*

(1) The assignments of error and grounds for rehearing set forth in the application for rehearing filed in this proceeding present no facts or legal

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[2] Opinion No. 512, page 126.

[3] If the Phase Two application is granted, there would be considerably more storage capacity available.

principles which would warrant any change in or modification of the Commission's Opinion No. 512 and accompanying order issued January 24, 1967.

(2) The Columbia Companies request for further oral argument should be denied.

*The Commission orders:*

(A) The application for rehearing filed jointly by Atlantic Seaboard Corporation, United Fuel Gas Company and Columbia Gulf Transmission Company on February 23, 1967, is denied.

(B) The Columbia Companies request for further oral argument is denied. Commissioner Carver *concurring* in the result only.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CONSOLIDATED GAS SUPPLY CORPORATION, DOCKET NO. CP67-6

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 24, 1967)

On July 12, 1966, Consolidated Gas Supply Corporation (Applicant) filed in Docket No. CP67-6 an application, as supplemented September 21, 1966, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a rearrangement of certain existing gas purchasing and reselling procedures for satisfying the requirements of its affiliates within the Consolidated Natural Gas System (Consolidated System), and simultaneously submitted in Docket No. RP67-2 related new rate schedules, service agreements, and a new storage service,[1] all as more fully set forth in the application.

Applicant states that the proposed changes in the gas purchasing procedures and the modifications of its rate structure are steps toward the further simplification of operations within the Consolidated System, following the corporate realignment resulting from the recent merger of the two Consolidated System subsidiaries, Hope Natural Gas Company and New York State Natural Gas Corporation, with Applicant as the surviving corporation, as approved by the Commission in *Hope Natural Gas Co.*, 33 FPC 150.

Under Applicant's proposal the rights which its affiliates, The East Ohio Gas Company (East Ohio), The Peoples Natural Gas Company (Peoples), The River Gas Company (River), and Lake Shore Pipe Line Co. (Lake Shore), now have to purchase gas under existing long-term contracts with Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) and Texas Eastern Transmission Corporation (Texas Eastern) would be transferred to Applicant, thus making Applicant the sole purchaser from these pipelines for the Consolidated System. Applicant states that this change in purchasing procedure will promote the simplification, flexibility, and efficiency of obtaining and using that portion of the long-term gas supply received from Tennessee and Texas Eastern by the Consolidated System companies.

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[1] The rate proposal is in effect merely a *pro forma* filing as it depends upon the issuance of the requested certificate. Section 154.22 of the Commission's Regulations under the Natural Gas Act prohibits the filing of any new rate schedule or contract for the performance of any service for which a certificate of public convenience and necessity must be obtained, until such certificate has been issued.

Applicant also proposes to execute new service agreements with East Ohio, Peoples, River, and Lake Shore which will provide for the replacement of their natural-gas requirements now purchased from Tennessee, Texas Eastern, and the Applicant. Future sales under these new service agreements will be made under proposed new rate schedules, to be designated Rate Schedule RQ-1 and Rate Schedule RQ-2-3, which embody a three-part rate form providing for the payment of contract demand, winter requirements, and commodity charges. The Applicant states that the rates proposed in the new rate schedules will neither increase over-all gas purchase costs to its affiliates nor increase Applicant's net revenues. A different type of storage service is to be provided for Peoples under a newly-proposed Rate Schedule SSO requiring the utilization of one-half of the share of Applicant's top storage capacity in Oakford Storage Properties, Westmoreland County, Pennsylvania.

No new facilities are required to accomplish the proposed operations and services. Applicant requests authority to utilize existing connections between Tennessee and Texas Eastern and its affiliates for the delivery of gas by those pipelines to East Ohio, Peoples, River, and Lake Shore for Applicant's account.

Applicant also requests authority to cancel its Rate Schedules G-1, I-1, G-2, I-2, and CA-3 in its FPC Gas Tariff, Original Volume No. 1, and its Rate Schedules OSS and T-1 in its FPC Gas Tariff, Original Volume No. 2, and service agreements with its affiliates under these rate schedules simultaneously with the effectiveness of the rate schedules and service agreements proposed herein.

The *pro forma* filing in Docket No. RP67-2 comprises revised tariff sheets to its FPC Gas Tariff, Original Volumes Nos. 1 and 2, embodying the aforementioned Rate Schedules RQ-1, RQ-2-3, and SSO and indicating other appropriate tariff changes related to the rearrangement in purchase pattern, sales, and storage service hereinbefore described. Applicant included as Exhibit P to its application in Docket No. CP67-6 the interrelated material which it filed in Docket No. RP67-2.

Subsequent to the issuance on August 1, 1966, in Docket No. CP67-6 of notice of application, published in the *Federal Register* on August 6, 1966 (31 F.R. 10589), petitions to intervene in Docket No. CP67-6 were filed by New York State Electric & Gas Corporation on August 15, 1966, Niagara Mohawk Power Corporation on August 22, 1966, Texas Eastern Transmission Corporation on August 25, 1966, and the City of Pittsburgh, Pennsylvania, on August 29, 1966. Notices of intervention were filed by the Pennsylvania Public Utilities Commission on August 19, 1966, and by the Public Utilities Commission of Ohio on September 12, 1966. With the exception of the City of Pittsburgh (City), no party requested formal hearing, although each party expressed a wish to be heard if formal hearing should be held.

City's petition to intervene, filed in both Docket Nos. CP67-6 and RP67-2, moved for consolidation of the two dockets and requested formal hearing therein. On November 30, 1966, City filed a document entitled "Amendment to the City of Pittsburgh's Petition to Intervene and Statement of Position." City therein withdrew its request for formal hearing but set forth issues which it says it was unable to resolve in conferences with Applicant. City contends that: (1) it is unable to evaluate the steps Applicant proposes to take in its application because Applicant has not indicated the expected ultimate or final results of the realignment plan mentioned in the *Hope* case *supra* at 33 FPC 154; (2) any final action by the Commission on the proposals in Docket No. CP67-6 without consideration of the place of the supply of gas now purchased by East Ohio from Panhandle Eastern Pipe Line Company (Panhandle) in Applicant's ultimate scheme of operations would be speculative and would not adequately weigh the public interest in the over-all realignment program; (3) the Commission should reject the proposed RQ–2–3 rates for the reason that they exceed the unit costs shown in Applicant's supplement filed in Docket No. CP67–6, and Applicant should be ordered to file rates which would recover no more than allowable costs.

On December 13, 1966, in reply to City's statement of position, Applicant filed an answer contending that: (1) Applicant did not deem it appropriate to include the Panhandle supply in the immediate realignment steps proposed in Docket No. CP67–6 because the Panhandle gas is delivered to East Ohio at a point 100 miles west of the westernmost market area of the Consolidated System and nearly 200 miles from Applicant's closest facility, and the Panhandle gas is of lower Btu content, quality, and pressure than any other pipeline purchases by the Consolidated System and would not, as City intimates, reduce Applicant's cost of service; and (2) City assumes improperly that Applicant's supplemental cost-of-service data were filed with the intention of establishing rate levels developed to allocate full costs among all zones and customers, whereas, in fact, the objective of the design of the rates proposed in Docket Nos. CP67–6 and RP67–2 is to maintain the historical pattern of Applicant's net revenues from its affiliates, and, at the same time, to cause no increase in the affiliates' over-all average cost of gas.

Applicant has not indicated what rate structure it intends to propose respecting its nonaffiliated customers. We are therefore not in a position to decide finally whether the rates it now proposes for its affiliated customers are appropriate. Nor are we able to determine the effect final approval of the proposed new rates might require with respect to rates applicable to its nonaffiliated customers. We shall therefore approve the instant proposal tentatively and require Applicant to file whatever rate structure it considers appropriate for its nonaffiliated customers in light of the new rate structure tentatively approved herein. In view of this disposition, it is unnecessary to consider City's objections at this time. Those objections, as well as any others, will be considered when we review the overall rate structure of Applicant in six months upon the filing herein required.

Since City's amendment to its petition to intervene withdrew its request for formal hearing in Docket No. CP67–6, it does not appear that any further action on the petitions to intervene is necessary.

Upon consideration of Applicant's proposal, we are of the opinion that the certificate requested by Applicant meets the requirements of the public convenience and necessity and we shall grant the authorization requested therein subject, however, to the following conditions: (1) any increase in the average cost of purchased gas to Applicant which might result from the gas purchase realignment authorized under this certificate shall not be allocated to Applicant's nonaffiliated customers in any future rate proceeding; (2) our issuance of this certificate shall not be construed as constituting final approval of Applicant's related proposed changes in rates or the basis therefor and shall not preclude this Commission, or any of Applicant's customers, from questioning the propriety of those rate changes in any future proceeding, and (3) Applicant shall file what it considers to be an appropriate rate structure applicable to its nonaffiliated customers within six months.

The questions considered herein relate only to the rate structure or rate design of Applicant's system. These questions will not delay consideration of the appropriate rate level of Applicant's rates, which is under active study at the present time.

At a hearing held on March 23, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, in-

**cluding the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,**

***The Commission finds:***

**(1) Applicant, Consolidated Gas Supply Corporation, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, was formed as a result of the merger of New York State Natural Gas Corporation and Hope Natural Gas Company, and is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in *Hope Natural Gas Co.* (33 FPC 150).**

**(2) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.**

**(3) The rearrangement of gas purchase procedures, utilization of existing delivery points for Applicant's account, institution of a new storage service for The Peoples Natural Gas Company, and the filing and cancellation of appropriate rate schedules and service agreements necessary therefor, are required by the public convenience and necessity and a certificate authorizing these proposals should be issued as hereinafter ordered and conditioned.**

**(4) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (e), and (f) of Section 157.20 of such Regulations.**

***The Commission orders:***

**(A) A certificate of public convenience and necessity is issued to Applicant, Consolidated Gas Supply Corporation, authorizing the operations and acts indicated in paragraph (3) above, as more fully described in the application in Docket No. CP67-6, upon the terms and conditions of this order.**

**(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), and (f) of Section 157.20 of such Regulations.**

**(C) Applicant shall file the proposed tariff changes and service agreements, related to the certificate of public convenience and necessity, issued herein, in a form acceptable to the Commission, effective as of the date of this order or such later date as may be requested by Applicant.**

**(D) Any increase in the average cost of purchased gas to Applicant which might result from the gas purchase realignment authorized under this certificate shall not be allocated to Applicant's non-affiliated customers in any future rate proceeding.**

**(E) Although our issuance of the certificate herein necessarily allows Applicant to put the related rate changes into effect upon a proper filing thereof, as the certificate and rate proposals are interdependent, our issuance of the certificate is not to be construed as constituting final approval by the Commission of the rate form, rate levels, allocation and rezoning upon which the proposed rate changes are based, nor will the issuance of this certificate preclude this Commission, or any of Applicant's customers, from questioning the propriety of the rate changes proposed herein, in any future proceeding.**

**(F) Applicant shall file with the Commission, within six months from the date of acceptance of this order, revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1, relating to its nonaffiliated customers. The Commission reserves the right to suspend this filing and enter upon a hearing to review**

Applicant's overall rate structure and to afford all parties affected an opportunity to present their views.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. G-12135 AND NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-41

### ORDER CONSOLIDATING APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY WITH SHOW CAUSE PROCEEDING AND SETTING DATE FOR HEARING

(Issued March 24, 1967)

On August 17, 1962, 28 FPC 344, the Commission ordered Northern Natural Gas Company (Northern) to show cause, if any there be, within 30 days from the date of issuance of the order, why the Commission should not find and determine that:

(1) Northern's sale to Pioneer Gas Company for resale in the State of Texas is a jurisdictional sale; and

(2) Northern should apply for a certificate of public convenience and necessity authorizing such sale.

On September 26, 1962, Northern filed an answer to the Order to Show Cause, denying that its sale to Pioneer of natural gas which was delivered for the account of Northern to Pioneer by El Paso Natural Gas Company (El Paso) from the latter's Plains to Dumas, Texas, pipeline, is subject to the jurisdiction of the Commission under the Natural Gas Act.

Action was withheld in this proceeding pending decision on an application for a declaratory order by United Gas Pipe Line Company involving jurisdiction over certain sales made by United in the "Florida Parishes" of Louisiana. Subsequent to our decision therein, United Gas Pipe Line Co., 30 FPC 560, the Court of Appeals for the 5th Circuit sustained the Commission's Opinion in *Louisiana Public Service Commission* v. *F.P.C.*, 359 F. 2d 525, cert. den., 385 U.S. 833, holding that sales by a pipeline in a state of production off an interstate pipeline were jurisdictional sales. Since the instant proceeding appears to present the same issue, and since Northern has not voluntarily filed an application for a certificate of public convenience and necessity, it is appropriate to now set the show cause proceeding for hearing.

On March 1, 1957, El Paso filed at Docket No. G-12135 its application for a certificate of public convenience and necessity as well as a request for a temporary certificate authorizing the delivery by El Paso to Pioneer for the account of Northern of up to 69,000 Mcf per day during the seasonal period from April 1 to October 1 of each of the years of 1957 through 1961 at points of delivery located along El Paso's Dumas line. By temporary certificate issued June 7, 1957, El Paso was authorized to render the service during the seasonal period of 1957. Thereafter, further temporary certificates were issued from year to year authorizing continuation of deliveries to Pioneer by El Paso, but increasing the amount authorized to 100,000 Mcf per day.

A permanent certificate to El Paso has been withheld pending resolution of the Order to Show Cause against Northern. For administrative purposes it is appropriate that El Paso's application in Docket No. G-12135 should be consolidated with the proceeding against Northern in Docket No. CP63-41.

*The Commission finds:*

(1) In view of the foregoing and upon the basis of the Commission's order to show cause issued August 17, 1962, and the answer thereto, it is necessary and appropriate to carry out the provisions of the Natural Gas Act that a hearing be held on the aforementioned order to show cause to determine why Northern should not be directed to apply for and obtain a certificate of public convenience and necessity authorizing the sale of natural gas to Pioneer Natural Gas Company.

(2) It is appropriate and in the public interest that the above-captioned matters be consolidated for hearing and decision as hereinafter ordered.

(3) The expeditious disposition of this proceeding may be effectuated by holding a prehearing conference, and to that end, a prehearing conference should be held on April 25, 1967, as hereinafter ordered.

*The Commission orders:*

(A) A public hearing to be held in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., commencing May 16, 1967, at 10:00 a.m. (EDT) concerning the question as to whether Northern should be required to apply for and obtain a certificate of public convenience and necessity authorizing it to make the sale to Pioneer Natural Gas Company which it has previously made without authorization.

(B) The above-captioned matters are hereby consolidated for the purposes of hearing and decision.

(C) Pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before a duly designated presiding examiner shall commence at 10:00 a.m. (EDT) on April 25, 1967, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of effectuating the expeditious disposition of these consolidated proceedings.

(D) The purpose of such conference shall be to consider all matters at issue in the above dockets, the manner in which evidence shall be presented, to fix dates for the distribution of such evidence, to enter into such stipulations of fact as the parties may agree upon, and to consider any and all matters which might contribute to an expeditous disposition of this proceeding.

(E) Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before April 17, 1967. Protestants and Petitioners shall state with particularity the dockets in which they claim to have an interest.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITY OF HAMILTON, OHIO, DOCKET NO. CP65-402; TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP66-13; THE OHIO FUEL GAS COMPANY, DOCKET NO. CP66-207

### ORDER DENYING APPLICATIONS FOR REHEARING

(Issued March 24, 1967)

On January 24, 1967, 37 FPC 209, the Commission issued its Opinion No. 513 and accompanying order in this proceeding authorizing the City of Hamilton, Ohio, to purchase its entire natural gas requirements from the Texas Gas Transmission Corporation, rather than from either its present supplier, The Cincinnati Gas & Electric Company, or a competing supplier, The Ohio Fuel Gas Company. An appropriate certificate was issued to Texas Gas. Applications for rehearing were filed on February 23, 1967, jointly by Cincinnati Gas and the City of Cincinnati, and also by Ohio Fuel and Kentucky Gas Transmission Corporation. Upon due consideration of the various claims made in the rehearing applications we conclude that no modification is required or should be made in our Opinion and order.

In authorizing the future service by Texas Gas, we found that the evidence established that Hamilton and its customers will obtain significant economic benefits from the change in suppliers and that the benefits to Hamilton outweighed the harmful effects of the change on the competing suppliers and their customers. The bases for these findings are fully stated in the Opinion. We also rejected certain claims by Cincinnati Gas and Ohio Fuel that the question of who shall supply existing markets should not be opened for redetermination, *i.e.*, that the consideration should be solely with regard to new market increments, and that the certification of Texas Gas was not in the public interest as leading to a duplication of facilities and a resulting non-use of existing pipeline facilities. Finally, we held that we would not include a condition requiring Hamilton to secure State abandonment authorization as a condition precedent to the discontinuance of its present service arrangement.

Most of the arguments made in the rehearing applications were previously made and fully considered. Certain of the points made in the applications, however, require further comment.

Ohio Fuel contends that our judgment in the case erroneously was circumscribed by our misinterpretation of *Lynchburg*[1] and the "net market loss" test therein referred to, to the exclusion of a thorough consideration of the over-all public interest. To the contrary, our decision shows that we took full consideration of all relevant factors, including the foreseeable effects on Cincinnati Gas and Ohio Fuel and their customers, the diminished usefulness of the existing facilities, the economic justification for the construction of the new facilities and the needs and benefits to Hamilton and its consumers. In so doing, we have not disregarded the fact that certain fixed costs of Cincinnati Gas and Ohio Fuel may have to be borne by other customers. We did not, however, accept the inflated loss calculations advanced by these parties.

Further, it is asserted by Ohio Fuel and Cincinnati Gas that, in determining whether an existing supplier will suffer any detriment as a result of load diversion, consideration should not be given to possible future growth which it may experience. We do not here decide that speculative long-term potential growth is sufficient to offset immediate detriment and our decision was not predicated on any such finding. But we do think that potential growth, which is demonstrated to be not at all speculative, is very much a relevant consideration and it is to this that our opinion is addressed. As we stated therein:[2]

> The evidence is clear that Cincinnati Gas' loss of the Hamilton market will shortly be offset by an increase in Cincinnati Gas' other sales. These sales will be made at a better load factor than the present sale, and Cincinnati Gas will experience an actual reduction in its average cost of purchased gas without this load. There is no indication in the record that

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[1] *Lynchburg Gas Co.* v. *F.P.C.*, 336 F. 2d 942 (CADC–1964).

[2] Opinion No. 513, pages 215, 216.

the loss of Hamilton will occasion any increase in rates to Cincinnati Gas' other customers or that they will be substantially harmed.

Cincinnati Gas and the City of Cincinnati would have us limit our certificate authority solely to new increments of supply without any possibility of reconsideration of past arrangements. In our opinion, such a construction would unjustifiably limit our authority under Section 7 of the Natural Gas Act and would not be in the public interest. The Act requires that we issue a certificate if the proposed service is or will be required by the present or future public convenience and necessity. Not only is there no prohibition to the issuance of a second certificate for an area already being served, but such a possibility is expressly recognized in Section 7(g). As noted in the Opinion, "a natural gas company does not have a permanently fixed or vested interest in its existing markets * * * If the overall public interest will be served by permitting a competing company to supply an existing market it should be permitted to do so."

Applicants request that we grant rehearing to receive evidence regarding a settlement proposal submitted by Ohio Fuel to staff and its jurisdictional customers in its rate proceeding at Docket No. RP66-7, not a part of this proceeding, which would have the effect of increasing the allocation of gas under Ohio Fuel's Winter Service rate schedule to Cincinnati Gas. The argument is made that the rate change inherent therein would directly affect the cost of gas to Cincinnati Gas and Hamilton, thereby showing a decreased economic detriment from the continued service by the existing supplier. The parties note in support that we considered changes in Texas Gas' rates which did not become effective until after the hearing in this proceeding had been concluded and assert that it is only fair and proper that the changes described in the settlement proposal be considered.

Even though the settlement proposal would make available to Cincinnati Gas 8,500 Mcf per day of Winter Service volumes, with a corresponding reduction in Contract Demand volumes, it is not final and may undergo many changes before it is submitted to the Commission for approval. Our Opinion explains why we considered it improper to take into account the original attempted allocation of Winter Service gas for the service to Hamilton. The reduction contemplated in the present proposal would have only a minimal effect on the purchased gas costs of either Hamilton or Cincinnati Gas, considering the latter's total gas supply, and would not materially alter our Opinion in this proceeding. The same would be true at any reasonable range within which the present proposal might yet be modified. The Texas Gas rate change stands on an entirely different footing since it has been approved as the currently effective legal rate, in contrast to the present situation which, as described by the parties, is only a proposal presented to the parties in an attempt at settlement of a pending case.

Although the facilities to be installed by Texas Gas were estimated to cost $7,816,000, its estimated incremental rate of return on the service to Hamilton would be 10.35 per cent in 1968 and 10.93 per cent in 1969,[3] significantly above the 6.5 per cent system-wide rate of return utilized in its last rate settlement in Docket No. RP67-10. These additional revenues will serve to benefit all of Texas Gas' customers, including Ohio Fuel.

*The Commission further finds:*

The assignments of error and grounds for rehearing set forth in the application for rehearing filed in this proceeding present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 513 and accompanying order issued January 24, 1967.

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[3] These calculations are based on the G-4 rate in effect at the time the record was made and do not take into account the rate reduction referred to in the Opinion and which has the effect of reducing the 1968 estimated incremental return by 0.98%.

*The Commission orders:*

The applications for rehearing filed jointly by The Cincinnati Gas & Electric Company and the City of Cincinnati and by The Ohio Fuel Gas Company and Kentucky Transmission Corporation on February 23, 1967, are denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-148 (PHASE I)*

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 24, 1967)

On November 23, 1966, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-148 (Phase I), as supplemented on March 13, 1967, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of an additional 47,637 Mcf of natural gas per day to existing resale customers, all as more fully set forth in the application, as supplemented, in this proceeding (Phase I).

Specifically, Applicant proposes to construct and operate (a) 11,000 compressor horsepower at its Bushton, Kansas, compressor station, (b) 5.1 miles of 3-inch branch line, together with metering and regulating facilities, in Minnesota, and (c) 46.6 miles of 26-inch to 36-inch pipeline loop at various locations in Oklahoma, Kansas and Iowa. The total estimated cost of these facilities is $9,623,929, which cost will be financed from funds on hand, reserve accruals and retained earnings.

Commencing with the 1967-68 heating season, Applicant proposes the following increases in the contract demands of existing customers:

| Distributor: | *Increase in contract demand (Mcf)* |
|---|---|
| Austin, Minn.—Austin Utilities | 57 |
| Cedar Falls, Iowa—M.U.B.T | 500 |
| Greeley Gas Co | 150 |
| City of Harlan, Iowa | 50 |
| Interstate Power Co | 900 |
| Iowa Electric Light & Power Co | 4, 491 |
| Iowa-Illinois Gas & Electric Co | 600 |
| Iowa Power & Light Co | 5, 475 |
| Iowa Public Service Co | 3, 500 |
| Iowa Southern Utilities Co | 120 |
| Minneapolis Gas Co | 6, 914 |
| Minnesota Natural Gas Co | 3, 500 |
| Nebraska Natural Gas Co | 300 |

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*The application in this docket is divided into two Phases. This order pertains exclusively to Phase I of said application, as supplemented.

| Distributor—Continued | *Increase in contract demand (Mcf)* |
|---|---|
| New Ulm, Minn.—P.U.C. | 200 |
| North Central Public Service Corp. | 50 |
| Northern States Power Co. | 9,500 |
| Northwestern Public Service Co. | 550 |
| Omaha, Nebraska—M.U.D. | 4,805 |
| Owatonna, Minn.—M.P.U. | 300 |
| Town of Remsen, Iowa | 25 |
| Town of Sanborn, Iowa | 35 |
| Town of Sioux Center, Iowa | 50 |
| Superior, Wis.—W.L. & P. Co. | 500 |
| Watertown, S. Dak.—M.U. | 300 |
| Western Power & Gas Co. | 672 |
| Town of Woodbine, Iowa | 70 |
| Peoples Natural Gas Division | 4,023 |
| Total | 47,637 |

The proposed increased sales will be made pursuant to Applicant's appropriate effective rate schedules on file with the Commission.

On December 30, 1966, the Town of Brooklyn, Iowa, filed a petition to intervene in this proceeding; however, on February 23, 1967, said petition was withdrawn.

Several other petitions to intervene have been filed herein. None of said petitioners requests formal hearing, and each petitioner desires to intervene only in the event that a formal hearing is held herein. Inasmuch as the shortened procedure is being used herein, no further action on said petitions appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on March 23, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits (Phase I), submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding (Phase I) are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of the subject facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) The authorization hereinafter granted should be without prejudice to Applicant's right to request amendment of the subject order to authorize Phase II facilities.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding (Phase I), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation and sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months from the date on which this order issues.

(D) The authorization granted in paragraph (A) above is without prejudice to Applicant's right to request amendment of the subject order to authorize Phase II facilities.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7326

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued March 24, 1967)

Pacific Power & Light Company (Applicant) filed an application on November 22, 1966, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the acquisition of certain electric facilities from Hood River Electric Cooperative (Hood River).

Applicant is incorporated under the laws of the State of Maine with its principal place of business office in Portland, Oregon, and is engaged in the electric utility business in the States of Washington, Oregon, Wyoming, California, Montana and Idaho.

Hood River is an independently financed cooperative system incorporated under the laws of Oregon. It is engaged in the distribution of electric energy to ultimate consumers in Hood River County, Oregon. It has no generating facilities and purchases energy to meet its requirements from Bonneville Power Administration. In 1965 it delivered 31,737,524 kwh to 1,374 ultimate consumers. Both Applicant and Hood River own facilities for the distribution and sale of electric energy in substantially the same geographical areas in Hood River County.

The facilities to be acquired by the Applicant from Hood River consist of certain electric distribution systems and associated facilities owned, operated and maintained by Hood River in Hood River County, Oregon. The consideration to be paid by the Applicant for the facilities is the sum of $403,953. As part of the transaction, Applicant proposes to sell and convey to Hood River various electric distribution facilities owned, operated and maintained by the Applicant in Hood River County, Oregon. As consideration for the sale by Applicant, Hood River will pay the sum of $682,677. Applicant proposes to transfer approximately 631 customers to Hood River and Hood River proposes to transfer to the Applicant approximately 295 customers. Applicant represents that to the best of its knowledge the proposed acquisition will not have any effect upon any contract for the purchase, sale or interchange of any electric energy.

All of the 631 customers which will be transferred to Hood River will receive a decrease in rates except two street lighting accounts whose rates will not be changed. The 511 residential customers will have an estimated average monthly decrease of $1.80 or 15 percent. The 116 commercial customers will have an estimated average monthly decrease of $6.70 or 33 percent, and two industrial customers will have an estimated average monthly decrease of $223.00 or 21 percent. All of the 295 customers of Hood River which will be transferred to Pacific, will experience increases in rates. The 247 residential consumers will have an estimated average monthly increase of $2.55 or 21 percent, 47 commercial customers will have an estimated average monthly increase of $14.85 or 49 percent, and the only industrial customer will have an estimated average increase of $92.00 or 29 percent. On an overall basis, 631 consumers will receive a total monthly estimated reduction in charges of $2,143.00 and 295 consumers will receive a total monthly estimated increase in charges of $1,419.90.

The Applicant will pay $403,953 for electric facilities which have a depreciated original cost of $220,539.11 or $183,413.89 in excess of depreciated original cost. This excess will be an acquisition adjustment. From the sale of electric facilities which have a depreciated original cost of $626,385.35, the Applicant will receive $682,677, a book gain of $56,291.65. The Applicant proposes to charge to Account 435, Miscellaneous Debits to Surplus, the difference of $127,122.24 between the $183,413.89 acquisition adjustment on the plant acquired and the $56,291.65 book gain on the plant sold. The proposed transaction was set up in accordance with a statute of the State of Oregon which encourages neighboring utility systems to determine a common boundary between their service areas.

The principal result of this transaction is that there will be a definite boundary between the service areas of the two parties. Existing duplication of facilities will be removed and future duplication will be prevented. This will aid planning of future extensions in the area. By order dated January 12, 1967, the Public Utility Commissioner of Oregon approved the proposed transaction.

In approving the transactions the Oregon Commissioner noted that the proposed transfer will eliminate present and avoid future unnecessary duplication of electric facilities by each of the contracting parties, that the agreed allocation of territory and customers will promote efficient, economic and safe operation of the utility systems of both parties and that wasteful duplication of investments in poles, wiring and other plant will be eliminated and maintenance costs lowered.

Written notice of the application has been given to the Oregon Public Utility Commissioner, Wyoming Public Service Commission, Washington Utilities and Transportation Commission, California Public Utilities Commission, Montana Board of Railroad Commissioners, and Idaho Public Utilities Commission and to the Governor of each of those states. Notice has also been given by publication in the Federal Register on December 13, 1966 (31 F.R. 15713), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before December 28, 1966, with the Federal Power Commission, Washington, D.C. 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company,* Docket No. E-7025 (27 FPC 620).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with part of those of Hood River, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

*The Commission orders:*

(A) The proposed acquisition by Applicant of the electric facilities referred to above and as described in the application is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transactions herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## DUKE POWER COMPANY, PROJECT NO. 2503

### ORDER APPROVING REVISED EXHIBIT L DRAWINGS

(Issued March 27, 1967)

On February 10, 1967, Duke Power Company, licensee for the proposed Keowee-Toxaway Project No. 2503 to be located on the Keowee, Little, Whitewater, Toxaway, Thompson, and Horsepasture Rivers, all tributaries of the Savannah River, filed for Commission approval revised Exhibit L drawings for the Keowee and Jocassee developments of the projects, pursuant to Article 27 of the license.

The drawings show changes in the design of the project structures for the Keowee development and the revised one-line diagrams for the Keowee and Jocassee developments. The revised drawings were submitted in accordance with Article 27 of the license which requires Commission approval of final design drawings before construction begins. Licensee stated in its letter of transmittal dated February 9, 1967, that it contemplates beginning construction in March, 1967.

There are a number of design changes which have been made, most of which are of a minor nature. The principal changes are those associated with the design of the dams and dikes of the Keowee development. These changes are the result of more detailed investigations of material availability and additional design analyses. Such changes consist of a modification of the surface slopes for the dams and dikes and minor realignment of the structures to conform with the topography of the respective sites for the structures. The Keowee and Little River dams under the design changes will have an upstream surface slope of 2.0 to 1.0 between the crest and elevation 772 feet, this portion of the slope being surfaced with riprap for protection against reservoir fluctuations. The remaining portion of the upstream face below elevation 772 feet will have a slope of 2.5 to 1.0. The downstream face of the dams will have a slope of 2.5 to 1.0 and a 60-foot wide berm at elevation 720 feet. The toe of the dams will be surfaced with riprap for protection against tailwater fluctuations. The several saddle dikes have the same design as the main dams except that the berm on the downstream slope is not included. Stability analyses have been made which show that the dam structures are adequately designed and will result in safe structures if construction is performed in accordance with sound engineering practices and if the materials used result in structures having factors of safety as specified on Exhibit L drawing FPC No. 2503–31.

Other changes to the project structures proposed by the licensee include increasing the length of the Little River Dam from about 1800 to feet to 2200 feet; locating the spillway 340 feet from the left abutment of the Keowee dam rather than 230 feet; decreasing the length of the power tunnel and penstock from about 1100 feet to 860 feet; and decreasing the penstock diameter from 26.5 feet to 26.17 feet.

The nuclear steam-electric-plant to be located on the Lake Keowee site, designated as "Site L," See Exhibit K (FPC 2503–4), has undergone certain design modifications. Principally, these modifications consist of relocating the intake and discharge canals for the condenser cooling water. The revised plans show that the intake canal will be located in the Little River portion of Lake

Keowee instead of on the Keowee River portion of the Lake. The discharge canal will be located in the Keowee River portion of the Lake at the site originally proposed for the intake facilities. The intake canal will now be farther away from the discharge canal and the revised arrangement should improve recirculation problems thereby reducing the thermal effect of the nuclear plant on the project reservoir.

In accordance with Article 44 of the license, the licensee has employed a board of three qualified consultants which has reviewed and approved the plans and specifications for the dams and dikes.

*The Commission finds:*

(1) The following described revised Exhibit L drawings conform to the Commission's Regulations and should be approved as part of the license for the project:

| Exhibit L | FPC No. | Title |
|---|---|---|
| Sheet 1 | 2503-29 | Keowee development plan. |
| Sheet 1A | 2503-30 | Do. |
| Sheet 2 | 2503-31 | Keowee development sections and details. |
| Sheet 5 | 2503-32 | Keowee and Jocassee developments' one-line diagrams. |

(2) Exhibit L drawings, Sheets 1, 2 and 5 (FPC Nos. 2503-11, -17 and -18) will be superseded and should be eliminated from the license.

*The Commission orders:*

(A) The revised Exhibit L drawings described in finding No. 1 above are hereby approved as part of the license for Project No. 2503 and the superseded Exhibits described in finding No. 2 above are hereby eliminated from the license for the Project.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of the foregoing order. In acknowledgment of the acceptance of the foregoing order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SIERRA PACIFIC POWER COMPANY

### ORDER ACCEPTING RATE SCHEDULE FILINGS EFFECTING RATE REDUCTIONS

(Issued March 27, 1967)

Sierra Pacific Power Company (Sierra), Reno, Nevada, on January 23, 1967, tendered proposed rate schedules for filing as part of its FPC Electric Tariff pursuant to the provisions of Section 205 of the Federal Power Act. These schedules would reduce Sierra's wholesale electric rates and charges to Truckee Public Utility District (Truckee), Truckee, California, Pacific Gas and Electric Company (PG&E), San Francisco, California, and California-Pacific Utilities Company (Cal-Pac), San Francisco, California, by an estimated total amount of $102,627 for the 12 months ending August 31, 1967. The proffered schedules would be effective as of February 1, 1967.

The proposed rate submittals would revise Sierra's Schedule R-1 for wholesale electric service rendered between 2.3 kv and 23 kv as well as Sierra's Schedule R-2 for wholesale electric service rendered at 60 kv. The changes are as follows:

| | R-1 | | R-2 | |
|---|---|---|---|---|
| | Present | Proposed | Present | Proposed |
| Demand charge: | | | | |
| First 600 kilowatts | [1] $2.20 | [1] $2.00 | [1] $2.10 | $1,000.00 |
| Additional kilowatts | [1] 1.90 | [1] 1.75 | [1] 1.80 | [1] 1.45 |
| Energy charge: | | | | |
| First 300 kilowatt-hours per kilowatt demand | [2] .775 | [2] .75 | [2] .76 | [2] .54 |
| Additional kilowatt-hours | [2] .585 | [2] .60 | [2] .57 | [2] .54 |

[1] Per kilowatt.
[2] Per kilowatt-hour.

At present Sierra renders wholesale electric service to Cal-Pac under Schedule R-2, to PG&E under Schedule R-1, and to Truckee under Schedules R-1 and R-2. The estimated effect of the proposed changes upon Cal-Pac, PG&E, and Truckee for the 12 months ending August 31, 1967, is as follows:[1]

| Customers | Present | Proposed | Reduction | Percent |
|---|---|---|---|---|
| Cal-Pac | $316,841 | $250,724 | $66,117 | 20.69 |
| PG&E | 38,602 | 36,598 | 2,004 | 5.81 |
| Truckee | 174,182 | 139,676 | 34,506 | [2] 19.18 |
| Total | 529,625 | 426,998 | 102,627 | 19.38 |

[2] Assuming all deliveries to Truckee at a single point under Schedule R-2 following completion of Truckee's voltage conversion program, the estimated reduction to Truckee for the 12 months ending Aug. 31, 1967, would be $37,977 (22.33 percent).

Sierra's proffered filings also include an Electric Service Agreement dated January 16, 1967, between Sierra and Truckee (Agreement). By its terms, that Agreement would supersede a prior service agreement dated February 1, 1966 between the parties currently on file with the Commission as part of Sierra's FPC Electric Tariff. The Agreement, effective for an initial term of five years, provides, among other things, that (1) Sierra will furnish all the electric requirements of Truckee at specified delivery points (two points at 60 kv and one point at 2.4 kv) until completion of Truckee's modernization, voltage conversion and interconnection program now in progress, at which time Truckee will receive its entire electric supply from Sierra at a new single 60 kv delivery point to be located at Sierra's substation in the Town of Truckee, Nevada County, California; (2) during the period of voltage conversion the reduced wholesale rates reflected in the proffered revisions will be applied as provided in Schedule R-1 and Schedule R-2, and thereafter at Schedule R-2;[2] (3) Sierra and Truckee will respect each other's service area in Nevada County, California, as defined in the Agreement and will not unnecessarily duplicate each other's electric facilities; and (4) Truckee will have the option to purchase from Sierra at original cost less related accrued depreciation the latter's distribution facilities now within the defined geographic limits of Truckee, a municipality of the State of California. Currently, Sierra and Truckee each provide electric utility service within the corporate limits of Truckee.

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[1] In addition to furnishing Truckee, PG&E, and Cal-Pac with wholesale electric service, Sierra also interchanges electric power and energy with Truckee-Carson Irrigation District (TCID), Fallon, Nevada. TCID is served under Sierra's Rate Schedule FPC No. 8 rather than under Sierra's FPC Electric Tariff.

[2] As noted above R-2 applies to 60 kv deliveries.

By order issued concurrently herewith *Truckee Public Utility District* v. *Pacific Gas and Electric Company*, Docket No. E-7248, *infra*, p. 614, we are authorizing the withdrawal of a complaint by Truckee filed October 5, 1965. In that proceeding, Truckee had proposed other wholesale power supply arrangements. Essentially, Truckee proposed to secure power and energy from the Bureau of Reclamation, United States Department of the Interior, in California with wheeling to Truckee over certain transmission lines of PG&E and Sierra. Conferences held among representatives of Truckee, PG&E, Sierra, the Public Service Commission of Nevada, and the staff of this Commission led to a settlement proposal, which caused Truckee to seek withdrawal of its complaint.

*The Commission finds:*

It is necessary and appropriate for purposes of the Federal Power Act and the Commission's Regulations thereunder and good cause has been shown to accept the proffered rate schedules of Sierra to become effective as of February 1, 1967.

*The Commission orders:*

(A) The 30-day notice period as provided in Section 205 of the Federal Power Act and Section 35.3 of the Commission's Regulations thereunder is waived with respect to Sierra's proffered rate schedules as referred to above and designated in the Appendix hereto, and they are allowed to take effect as of February 1, 1967, all as indicated in that Appendix.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedules in question insofar as their effective dates are concerned.

(C) The effectuation of those provisions of the Electric Service Agreement, dated January 16, 1967, between Sierra and Truckee calling for a single delivery point and a single rate schedule, as referred to above, shall constitute changes by Sierra in service and rates which shall require timely notice in accordance with Section 205(d) of the Federal Power Act and Part 35 of the Commission's Regulations thereunder.

(D) Acceptance of the rate schedules as referred to in paragraph (A) above is without prejudice to any findings or order which has been or may hereafter be made by this Commission in any proceeding by or against Sierra. Moreover, nothing in this order shall be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate provided for in the rate schedules referred to above and designated in the Appendix hereto; nor shall this order be deemed as recognizing any claimed contractual right or obligation affecting or relating to such service or rate.

## APPENDIX

### SIERRA PACIFIC POWER COMPANY

Filed: January 23, 1967. Effective date: February 1, 1967
FPC Electric Tariff—Original Volume No. 1

*Service agreement under tariff*

| Purchaser | Agreement date | Supersedes |
|---|---|---|
| Truckee Public Utility District | Jan. 16, 1967 | Service agreement dated Feb. 1 1966. |

*Revised sheets under tariff*

| Revised sheet No. | Date of issue | Subject | Supersedes | |
|---|---|---|---|---|
| | | | Sheet No. | Date of issue |
| First revised sheet No. 4 | Jan. 16, 1967 | Schedule R-1 | Original sheet No. 4 | Mar. 15, 1965 |
| First revised sheet No. 6 | do | Schedule R-2 | Original sheet No. 6 | Do. |

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP65-59

### ORDER RELEASING REFUNDS IN PART

(Issued March 27, 1967)

On January 16, 1967, 37 FPC 100, we issued an order in this docket approving a rate reduction and refund proposal of Texas Eastern Transmission Corporation (Texas Eastern), and prescribing certain refunds.[1] We directed Texas Eastern to make immediate refund payments to all but nine[2] of its jurisdictional customers, and to retain monies refundable to the latter customers until the issuance of a further Commission order. The customers to whom these amounts are refundable were directed in paragraph (D) of the January 16 order to submit, on or before February 16, 1967, reports of their respective intentions regarding the disposition of the retained amounts. The reports filed in accordance with that paragraph indicate that a partial release by Texas Eastern of the retained refunds is now appropriate.

Algonquin Gas Transmission Company (Algonquin) and Transcontinental Gas Pipe Line Corporation (Transco) indicate in their reports that they will flow through to their customers the entire amounts to be received from Texas Eastern. Staff has reviewed the proposed plans of distribution, and has determined that they are in accordance with the companies' respective obligations. It is therefore appropriate that we authorize Texas Eastern to release to Algonquin and Transco the full amounts shown to be refundable to them in Appendix A of our order of January 16, 1967. Neither company sells gas to any natural gas company subject to the Commission's jurisdiction. It is also appropriate, therefore, that we direct Algonquin and Transco to flow through, in accordance with the plans set forth in their respective reports, all monies received from Texas Eastern pursuant to this order.

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[1] Amended by Errata Notices issued January 17 and 25, 1967.

[2] Algonquin Gas Transmission Company, Consolidated Gas Supply Corporation, East Tennessee Natural Gas Company, The Manufacturers Light and Heat Company, The Ohio Fuel Gas Company, Tennessee Gas Transmission Company (now Tennessee Gas Pipeline Company, a division of Tenneco Inc.), Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, and United Natural Gas Company.

Texas Gas Transmission Corporation (Texas Gas) has indicated an intention to flow through to its customers the entire portion of its refund from Texas Eastern attributable to jurisdictional sales, and to retain the nonjurisdictional portion (less than 3 percent of the total). We are in agreement with this plan, and are therefore authorizing Texas Eastern to release to Texas Gas the full amount shown to be refundable to it in Appendix A of our January 16 order.

Texas Gas is currently retaining refunds received from other suppliers pursuant to previous orders of the Commission. We are today issuing an order in Texas Gas' Docket No. RP67-10 directing Texas Gas to release certain refunds and to retain others, *infra*, p. 612. That order authorizes Texas Gas to flow through the entire jurisdictional portion of the refund which it will receive from Texas Eastern pursuant to this order, with the exception of amounts refundable to three jurisdictional pipeline companies pending our determination of their intentions with respect to those amounts.

United Natural Gas Company (United Natural) has indicated an intention to flow through to its customers substantially all of the money to be received from Texas Eastern. We are therefore authorizing Texas Eastern to release the entire amount shown to be refundable to United Natural in Appendix A of our January 16 order.

United Natural's report of intended disposition indicates that two of its customers are jurisdictional pipeline companies.[3] Pending our determination of their intentions with regard to amounts refundable to them,[4] we are instructing United Natural to retain these amounts, and to flow through the rest of its refund from Texas Eastern in accordance with United Natural's report.

The reports filed by Tennessee Gas Pipeline Company (Tennessee) and East Tennessee Natural Gas Company (East Tennessee) indicate that these companies intend to retain the entire amounts refundable to them by Texas Eastern. In accordance with our practice during the pendency of the proceeding in Docket No. RP66-12,[5] we are directing Texas Eastern to continue its retention of the amounts refundable to both Tennessee and East Tennessee.

Three of the companies from whom we required refund reports, Consolidated Gas Supply Corporation, The Manufacturers Light and Heat Company, and The Ohio Fuel Gas Company, stated that, because their revenues and costs are currently under review by the Commission's staff, they are unable at this time to determine the extent to which they will flow through the amounts refundable to them by Texas Eastern. They request, therefore, that Texas Eastern be directed to continue its retention of those amounts pending the results of the Staff's studies. It is appropriate that we grant this request.

*The Commission orders:*

(A) Texas Eastern and its escrow agent are authorized to release and pay over to Algonquin Gas Transmission Company, Texas Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, and United Natural Gas Company, within 30 days from the date of this order, the amounts shown to be refundable to those companies, respectively, in Appendix A of the Commission's order issued January 16, 1967, in the instant docket, together with net escrow earnings to the date of refund.

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[3] Iroquois Gas Corporation and Pennsylvania Gas Company.

[4] We are requesting, by letter, a report of intended disposition from each of the two companies.

[5] See *Texas Eastern Transmission Corporation*, Docket No. RP66-12, orders issued December 5, 1966, 36 FPC 959, and February 13, 1967, 37 FPC 306.

(B) Within 60 days from the date of this order, Texas Eastern shall submit a report showing the amount received by each customer named in paragraph (A) above, together with a release from each customer. The allocable portion of the earnings of the escrow account shall be shown separately with respect to each customer.

(C) Algonquin Gas Transmission Company, Transcontinental Gas Pipe Line Corporation, and United Natural Gas Company (except as specifically set forth in paragraph (D) below), shall flow through the refunds received pursuant to paragraph (A) above in accordance with the plan set forth in their respective reports of intended disposition filed in compliance with paragraph (D) of our order of January 16, 1967, in the instant docket. Such flow-through payments shall be made within 30 days after receipt of Texas Eastern's payment, or within the time prescribed by an applicable settlement agreement, if any, whichever is later. Each company flowing through amounts received pursuant to this order shall submit a report showing the details of its refunds, together with releases from the recipient customers, within 30 days after the payments are made. (Texas Eastern's refund to Texas Gas Transmission Corporation is treated in our order issued today in Docket No. RP67-10.)

(D) United Natural Gas Company shall, pending further Commission order, retain and defer the flow-through of those portions of its refund from Texas Eastern received pursuant to paragraph (A) above, allocable to Iroquois Gas Corporation and Pennsylvania Gas Company. Such retention shall be treated in accordance with the methods set forth in paragraph (J) of the Commission's order issued April 21, 1965, in *Humble Oil & Refining Company*, Docket Nos. G-9287 and G-9288, *et al.*, 33 FPC 830, except that if United Natural elects to commingle the retained amounts with its general assets, the interest rate shall be 5½ percent per annum. A statement of the amounts retained pursuant to this paragraph and the manner of retention shall be included in the report filed by United Natural in compliance with paragraph (C) above, and copies of such report shall be served on both Iroquois Gas Corporation and Pennsylvania Gas Company.

(E) Texas Eastern and its escrow agent shall continue to retain the amounts refundable to Consolidated Gas Supply Corporation, East Tennessee Natural Gas Company, The Manufacturers Light and Heat Company, The Ohio Fuel Gas Company, and Tennessee Gas Pipeline Company, respectively. The continued retention of these amounts shall be governed by paragraph (C) of our order of January 16, 1967, in the instant docket.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. RP67-10

### ORDER RELEASING REFUNDS IN PART

(Issued March 27, 1967)

On November 8, 1966, the Commission issued an order in this docket which approved a stipulation as to rates filed by Texas Gas Transmission Corporation (Texas Gas) on September 23, 1966. That order also accepted for filing certain revised tariff sheets, and required Texas Gas to file a report with the Commission setting forth amounts to be refunded to Texas Gas's customers in accordance with the Stipulation and its prior settlement agreements.

On January 16, 1967, we issued an order in Docket No. RP65-59, 37 FPC 100, which required Texas Gas to submit a report of its intended disposition of amounts refundable to it by Texas Eastern Transmission Corporation (Texas Eastern).

Texas Gas filed a report on January 30, 1967, in compliance with both orders. In addition to the amounts refundable by Texas Eastern in Docket No. RP65-59,[1] the report covers refunds heretofore paid to Texas Gas by Tennessee Gas Transmission Company[2] (under Docket Nos. G-17166 and G-19983) and by United Gas Pipe Line Company (under Docket Nos. RP60-2, RP61-18 and RP63-1).

Texas Gas proposes to flow-through to its customers substantially all of the jurisdictional portion of the refunds currently in its possession or to be received. Our review of this plan indicates that it is in accordance with Texas Gas' flow-through obligations. Accordingly, it is appropriate that we authorize Texas Gas to flow-through the amounts set forth in its report except as hereinafter provided.

Three of the customers to whom Texas Gas proposes to make refund payments[3] are natural gas companies subject to the Commission's jurisdiction. At the present time, we have no indication of the intentions of these three companies with respect to the amounts refundable to them by Texas Gas. In accordance with our usual practice, therefore, we are directing Texas Gas to retain the amounts due to these three customers pending further order.

*The Commission orders:*

(A) Except as specifically ordered in paragraph (B) below, Texas Gas and its escrow agent are authorized to release and pay over to the customers listed in its report filed January 30, 1967, the amounts shown therein to be refundable to such customers. Such payments shall be made within 30 days from the date of Texas Gas' receipt of the refund from Texas Eastern Transmission Corporation prescribed by our order issued today in Docket No. RP65-59.

(B) Texas Gas shall, pending further Commission order, continue to retain and defer the flow-through of those amounts shown in its report of January 30, 1967, to be refundable to Michigan Wisconsin Pipe Line Company, The Ohio Fuel Gas Company, and Texas Eastern Transmission Corporation. Such retention shall be treated in the manner heretofore adopted by Texas Gas with respect to these amounts.

(C) Within 15 days from the date on which the payments authorized in paragraph (A), above, are made, Texas Gas shall file with the Commission a report showing the amount received by each customer, together with a release from each recipient. The report shall show, also, the amounts retained pursuant to paragraph (B), above, and the manner of retention.

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[1] The refund from Texas Eastern is being released by an order issued today in Docket No. RP65-59, *supra*, p. 610.

[2] Now Tennessee Gas Pipeline Company, a division of Tenneco Inc.

[3] Michigan Wisconsin Pipe Line Company, The Ohio Fuel Gas Company, and Texas Eastern Transmission Corporation.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRUCKEE PUBLIC UTILITY DISTRICT v. PACIFIC GAS AND ELECTRIC COMPANY, DOCKET NO. E-7248

### ORDER PERMITTING WITHDRAWAL OF COMPLAINT AND ANSWER THERETO

(Issued March 27, 1967)

This order grants the joint request of Truckee Public Utility District (Truckee), Truckee, California, and Pacific Gas and Electric Company (PG&E), San Francisco, California, for permission to withdraw Truckee's complaint and PG&E's answer thereto, and terminates the above-entitled proceeding. The joint request for withdrawal reflects the settlement of the issues raised by Truckee's complaint filed on October 5, 1965, against PG&E.

Truckee, a municipality of the State of California, owns and operates an electric distribution system in Nevada County, California. It purchases its entire electric supply at wholesale from Sierra Pacific Power Company (Sierra), Reno, Nevada. Truckee's complaint, filed pursuant to the provisions of Sections 205 and 206 of the Federal Power Act, proposed other wholesale power supply arrangements. Essentially, Truckee proposed to secure power and energy from the Bureau of Reclamation, United States Department of the Interior, in California with wheeling to Truckee over certain transmission lines of PG&E and Sierra.

The answer of PG&E opposing Truckee's complaint was filed on November 12, 1965. Comments on the complaint were filed by Sierra on November 10 and by the Public Service Commission of Nevada on November 15, 1965. Conferences held among representatives of Truckee, PG&E, Sierra, the Nevada Commission and the staff of this Commission led to the settlement proposal, under which Truckee, while remaining a customer of Sierra will *inter alia* receive power at reduced rates resulting in a reduction of costs to Truckee of approximately 20%.

The terms of the settlement proposal are set forth in an Electric Service Agreement, dated January 16, 1967, between Sierra and Truckee, which is the stated reason for the proposed withdrawal by Truckee and PG&E of their respective pleadings. By separate order issued concurrently herewith, *Sierra Pacific Power Company, supra*, p. 607, the Commission is accepting that Agreement for filing as part of Sierra's F.P.C. Electric Tariff under the provisions of Section 205 of the Federal Power Act.

The joint request of Truckee and PG&E to withdraw the complaint and answer thereto[1] was filed February 10, 1967, pursuant to the provisions of Section 1.11(d)(2) of the Commission's Rules of Practice and Procedure. By letter filed as of February 10, 1967, counsel for Sierra stated that it has no objection to the requested withdrawal of the complaint. A similar letter was filed by the Chairman of the Public Service Commission of Nevada as of February 10, 1967.

*The Commission finds:*

It is necessary and appropriate for the purposes of the Federal Power Act and the Commission's Rules of Practice and Procedure and good cause has been shown to permit withdrawal of (1) the complaint of Truckee Public

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[1] The joint request is entitled "Notice of Withdrawal of Complaint and Answer."

Utility District filed October 5, 1965 and (2) the answer thereto of Pacific Gas and Electric Company filed November 12, 1965, and to terminate this proceeding.

*The Commission orders:*

Permission is granted for (1) Truckee Public Utility District to withdraw its complaint filed October 5, 1965, and (2) Pacific Gas and Electric Company to withdraw its answer thereto filed November 12, 1965, and the above-entitled proceeding is terminated.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITY OF HAMILTON, KANSAS AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP67-190

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued March 28, 1967)

On December 29, 1966, the City of Hamilton, Kansas (Applicant) filed in Docket No. CP67-190 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Respondent) to make physical connection of its facilities with the facilities of Applicant and to sell and deliver to Applicant up to 328 Mcf of natural gas per day for resale and distribution in the City of Hamilton and environs, Greenwood County, Kansas, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate a distribution system and 6.5 miles of 4½-inch O.D. lateral pipeline which will extend south and east of Respondent's 6-inch pipeline to Applicant's proposed town border station. Respondent has agreed to construct 2.59 miles of the proposed lateral pipeline pursuant to its lateral line policy.

Applicant's estimated third year annual and peak day requirements are 24,450 Mcf and 328 Mcf, respectively. Said volumes of natural gas will be purchased pursuant to Respondent's rate schedule F-2 at an average rate of approximately 31.0 cents per Mcf.

The total estimated cost of the proposed project is $115,000, of which Respondent will invest $22,406, pursuant to its lateral line policy. Applicant proposes to finance its cost of construction through the issuance of 5 percent, 30-year gas revenue bonds.

On January 16, 1967, Respondent filed an answer to the application herein, stating that it has no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

(1) Respondent, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) Applicant, City of Hamilton, Kansas, is a municipal corporation incorporated under the laws of the State of Kansas and is legally empowered to

construct and operate natural gas facilities and to sell and distribute natural gas in said community.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 328 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 328 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP67-170

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued March 28, 1967)

On December 14, 1966, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP67-170 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, an increase in the reservoir gas limitation of the Howell Storage Field and the sale and delivery of natural gas to existing resale customers and for permission and approval to abandon in place certain facilities, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate the following facilities:

(a) Approximately 46.6 miles of 30-inch fourth mainline loop east of Tuscola, Illinois.

(b) Installation of 3,400 compressor horsepower at the existing Tuscola, Illinois, station.

(c) The following lateral transmission lines:

(1) 18.5 miles of 10-inch loop line near Jefferson City, Missouri,

(2) 18.4 miles of 12-inch loop line near Champaign, Illinois, and

(3) 15.3 miles of 12-inch line near Crawfordsville, Indiana. This line will replace an existing 6-inch line which Applicant proposes herein to abandon in place, and

(d) Measuring station facilities and other appurtenances.

The proposed facilities will increase Applicant's daily pipeline capacity by approximately 135,000 Mcf for a total daily capacity of 2,434,000 Mcf.

Applicant also proposes a net increase of 130,020 Mcf in the contract demands of 50 of its existing resale customers. The proposed additional sales of gas will be made pursuant to Applicant's appropriate effective rate schedules on file with the Commission.

Applicant states that to supply the proposed increase in contract demands, it will rely on increased purchases from Trunkline Gas Company* and on increased deliveries from Howell Storage Field. Accordingly, Applicant requests authorization to increase the reservoir limitation of said storage field.

The total estimated cost of the proposed facilities is $11,071,000, which cost will be financed initially by short term bank loans. Permanent financing will be by the issuance of debentures.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 23, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G-200 and G-207 (3 FPC 273).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of the subject facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

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*By order issued in Docket Nos. CP66-131 and CP66-171 concurrently with the subject order, Trunkline is authorized to sell an additional 70,000 Mcf of gas per day to Applicant, *infra*, p. 618.

(6) The reservoir gas limitation of the Howell Storage Field should be increased from 29,000,000 Mcf to 30,000,000 Mcf.

(7) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(8) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation and sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 1 year from the date this order issues.

(D) The reservoir gas limitation of the Howell Storage Field is increased from 29,000,000 Mcf to 30,000,000 Mcf.

(E) Superseding service agreements concerning the proposed sales shall be filed with the Commission in compliance with the Commission's Regulations under the Natural Gas Act.

(F) Permission for and approval of the abandonment by Applicant of facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted.

(G) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

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Before Commissioners; Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRUNKLINE GAS COMPANY, DOCKET NOS. CP66-131 AND CP66-171

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 28, 1967)

On November 30, 1966, Trunkline Gas Company (Petitioner) filed in Docket Nos. CP66-131 and CP66-171 a petition to amend the orders issued in said dockets on February 11, 1966, 35 FPC 224, and July 1, 1966, 36 FPC 1, respectively, by requesting authorization to construct and operate certain facilities and to increase sales for resale to certain customers, all as more fully set forth in the petition to amend.

By the order issued February 11, 1966, Docket No. CP66-131, Petitioner was authorized to install facilities and to provide a contract quantity for Consumers Power Company (Consumers) of 350,000 Mcf per day commencing November 1, 1966.

By the order issued July 1, 1966, Docket No. CP66-171, Petitioner was authorized to install facilities and to provide a contract quantity for Mississippi River Transmission Corporation (Mississippi) of 111,000 Mcf per day commencing November 1, 1966.

Petitioner seeks to amend the above-mentioned orders so as to authorize an increase in presently effective contract demands of the following listed customers as shown in the following tabulation:

| Customers | Rate schedule | Volumes—Mcf at 14.73 psia Sat. | | |
|---|---|---|---|---|
| | | Present contract demand | Proposed increase | Proposed contract demand |
| Consumers Power Co | P-2 | 350,000 | 75,000 | 425,000 |
| Mississippi River Transmission Corp | P-2 | 111,000 | 15,000 | 126,000 |
| Panhandle Eastern Pipe Line Co | P-1 | 470,000 | 70,000 | 540,000 |
| Clay City, Ill | SG-1 | 595 | 255 | 850 |
| McLeansboro, Ill | SG-1 | 2,600 | 500 | 3,100 |
| Clinton, Ky | SG-1 | 750 | 150 | 900 |
| La Center, Ky | SG-1 | 1,000 | 175 | 1,175 |
| Panola-Quitman Natural Gas District | SG-1 | 750 | 150 | 900 |
| Milford, Ill | SG-2 | 900 | 294 | 1,200 |
| Rensselaer, Ind | GS-2 | 2,700 | 1,300 | 4,000 |
| Total | | | 162,824 | |

Petitioner requests authority to construct and operate: 82.9 miles of 30-inch O.D. pipeline to loop portions of Petitioner's existing main transmission line between Bourbon, Illinois and the terminus of such line near Elkhart, Indiana; 229.2 miles of 36-inch O.D. pipeline and 5.5 miles of 30-inch O.D. pipeline to loop portions of Petitioner's existing main transmission lines between Longville, Louisiana, and Tuscola, Illinois; 17.2 miles of 24-inch O.D. pipeline to loop a portion of Petitioner's Lakeside-Longville, Louisiana, gathering line; 21.4 miles of 30-inch O.D. pipeline to loop a portion of Petitioner's Kaplan-Longville, Louisiana, gathering line; 1,050 additional horsepower at existing Compressor Station No. 313, Centerville, Louisiana; and 8,400 additional horsepower at existing Compressor Station No. 210, Kaplan, Louisiana. The proposed facilities will increase the transmission capacity of Petitioner's pipeline system to 1,230,000 Mcf per day.

The total estimated cost of the proposed facilities is $55,330,000, the permanent financing of which will be obtained from the sale of long-term securities and the issuance of additional common stock.

Petitions to intervene were filed by Consumers Power Company on December 22, 1966, and by Mississippi River Transmission Corporation on January 3, 1967. Consumers Power Company supports Applicant's requests. Mississippi River Transmission Corporation states it is not requesting a formal hearing in the proceeding.

Due notice of the filing of the petition to amend and opportunity for hearing thereon have been given by publication in the Federal Register on December 14, 1966 (31 F.R. 1577). No protest, petition to intervene in opposition, or notice of intervention has been filed in this proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's orders issued February 11, 1966 in Docket No. CP66-131 and July 1, 1966, in Docket No. CP66-171 be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's orders issued February 11, 1966, in Docket No. CP66-131 and July 1, 1966 in Docket No. CP66-171 are amended so as to authorize Petitioner to construct and operate the requested facilities and to sell and deliver the additional volumes of natural gas to its customers listed in the tabulation set forth hereinabove under the designated rate schedules, and as more fully set forth in the petitions to amend filed in Docket Nos. CP66-131 and CP66-171.

(B) Applicant and customers referred to in paragraph (A) above shall execute superseding service agreements in accordance with the Commission's Regulations reflecting the increase in daily contract quantity and file the same with the Commission.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) In all other respects said order shall remain in full force and effect.

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## OPINION NO. 518

## GEORGIA POWER COMPANY, PROJECT NO. 2354

### OPINION AND ORDER CONFIRMING WITH MODIFICATION COMMISSION'S ORDER ISSUING LICENSE

(Issued March 29, 1967)*

*Syllabus*

1. Construction of new saddle-dike in 1956 at Mathis Terrora project works falls within purview of prohibition of Section 23(b) of Federal Power Act and backdating of license for North Georgia Development is called for by the facts and applicable precedent. P. 623.
2. Commission authority to backdate a license in a case involving unauthorized construction of a project works in violation of Section 23(b) of the Federal Power Act has been judicially upheld. P. 624.
3. Commission has repeatedly held that backdating license to date of construction of a project works is appropriate where such works involve replacement of an old dam by a new one. P. 624.
4. Whether or not Georgia Power agreed with Commission advice that North Georgia Development was subject to licensing requirements, it was under obligation to file a declaration of intention prior to construction of replacement dike. P. 625.
5. Under circumstances here, it is neither discriminatory nor a true penalty for Commission to treat Georgia Power in terms of its license as it would have been treated had it initially complied with statute. P. 625.

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*Initial decision appears on p. 631. Rehearing granted by order issued May 26, 1967, 37 FPC 986. See Opinion No. 518-A and order issued June 6, 1968, modifying license, 39 FPC 930.

**6. Issuance of license for entire project accords fully with Commission precedent since record shows that dams and their generating and transmission facilities are integrated and together form a comprehensive plan for development of Tallulah-Tugalo watershed; that they actually develop 100 percent of the "head" of the watercourse; and that there is no reasonable basis in engineering, economics, conservation or law to require that each unit be licensed separately. P. 625.**

**7. Plain import of statute is that a hydro project, when considered as a complete unit, shall include transmission facilities necessary to carry power generated by it to a point of connection with distribution system or with an interconnected primary transmission system. P. 627.**

**8. Commission *finds Montana Power* controlling and includes contested lines as part of licensed project since they are necessary for carrying away power generated by hydro plants and lines are used principally for transmitting such hydro-generated power when plants are generating at full capacity. P. 627.**

**9. Use of transmission lines in nonpeaking periods to carry power from other sources is a logical and inevitable utilization in any system where hydro power is used for peaking; such dual utilization does not destroy essential nature of the lines as necessary component of complete hydro development. P. 629.**

**10. Present holding does not preclude possibility of future license amendments excluding some of the transmission lines from the license in event their function as primary project transmission lines is diminished. P. 629.**

**11. Considering applicant's argument that licensing of contested lines will be incompatible with public interest in event project is recaptured, Commission *notes* that not only is any project take-over speculative and conjectural but, even assuming take-over, there is no requirement or assurance that United States or a new licensee would wish to take over lines in question. P. 629.**

**12. Upon rehearing, Commission *confirms*, with modifications, prior order issuing major license under Section 4(e) of the Federal Power Act.**

**Commissioner Carver *dissenting* in part.**

***Tench C. Coxe* and *William H. Schroder* for Georgia Power Company.**

***John D. Lane* and *William J. Madden, Jr.* for the Staff of the Federal Power Commission.**

Before Commissioners: Lee C. White, Chairman; L. J. O' Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

BAGGE, *Commissioner:*

This proceeding involves an application for rehearing by the Georgia Power Company (applicant) on June 5, 1964, objecting to certain provisions of a license order issued by the Commission under Section 4(e) of the Federal Power Act on May 7, 1964 (31 FPC 1134), for applicant's North Georgia Development, Project No. 2354. The applicant questioned, among other points, the correctness of (1) the Commission's backdating of its license to January 1, 1956, and (2) the Commission's inclusion of 12 transmission lines of the applicant as part of the project works. The Commission granted rehearing on July 1, 1964.

On March 1, 1966, the Presiding Examiner, Robert M. Weston issued an initial decision in which he stated that the record did not disclose an adequate basis for backdating the applicant's license, and then held that under the precedent of the Commission's opinion in *Public Service Company of New Hampshire*, 27 FPC 830 (1962), the applicant's license should be made effective April 1, 1962. The Examiner also found that the 12 transmission lines of the applicant were not part of the project works.

The proceeding is before the Commission on the Examiner's decision, exceptions filed by staff, and the applicant's response. Staff contends that the applicant's construction of a saddle-dike in its Mathis Terrora reservoir in 1956 justifies the backdating of the applicant's license to January 1, 1956, and that the transmission lines at issue are primary lines within the meaning of Section 3(11) of the Federal Power Act and are therefore subject to the licensing authority of the Commission. For the reasons set forth below, we are of the opinion that staff's exceptions are well founded, and that the Examiner's decision on the issues of backdating and exclusion of the 12 transmission lines should be reversed.

### *Background*

On March 18, 1963, the Georgia Power Company of Atlanta, Georgia, applied for a license under the Federal Power Act for constructed Project No. 2354, known as the North Georgia Development, located on the Tallulah and Tugalo Rivers in Rabun, Habersham, and Stephens Counties, Georgia, and Oconee County, South Carolina. The Tallulah and Tugalo Rivers are tributaries of the Savannah River. The development consists of six dams and accompanying generating facilities, four of which are located on the Tallulah River in descending order, as follows: Burton, Nacoochee, Mathis Terrora, and Tallulah. The other two developments, Rugalo, and Yonah, are located in descending order on the Tugalo River. The dams and powerhouses were constructed over a fourteen-year period, beginning with Tallulah in 1913 and ending with the installation of generating units at Burton in 1927. In 1956 Georgia Power constructed an earth saddle-dike at the Mathis Terrora development, at a cost of $661,709, to replace an original concrete dike which had settled and had begun to rotate on its footing.

These six hydro dams develop the water power resources of the continuous flow of the Tallulah River-Tugalo River watercourse. Each dam backs water up to its upstream counterpart, and there is no undeveloped "head." The Burton project is operated for seasonal storage, and the other five downstream projects use this storage on a daily regulating basis. Georgia Power stated that the six projects operate "as an integrated unit to meet the peak load of the applicant's system and make the best use of the water." The total power capacity of the project is 166,420 kilowatts.

In our licensing order of May 7, 1964, we found that the applicant's project affects navigable water of the United States; that the Tallulah and Tugalo Rivers are streams over which Congress has jurisdiction under its authority to regulate interstate and foreign commerce; that the six dams and power installations of North Georgia Development constitute one project for licensing purposes; that under the criteria set forth in *Public Service Company of New Hampshire*, Opinion No. 357, 27 FPC 830 (1962), the applicant's license should have an effective beginning date of January 1, 1956, and a termination date of December 31, 1993; and that 12 transmission lines which Georgia Power had not included in its application should be included in the license as parts of the "project." We ordered annual charges under Section 10(e) of the Federal Power Act to be computed on the entire development beginning on January 1, 1956, and we also provided that Section 10(d) of the Act which relates to amortization reserves would be applicable to the entire development as of the effective date of the license.

### *The Backdating of Applicant's License*

We agree with staff that the applicant's construction of a new saddle-dike in 1956 at its Mathis Terrora project works falls within the purview of the prohibition of Section 23(b) of the Federal Power Act, and we find that the backdating of the applicant's license for the North Georgia Development is called for by the facts of this case, as well as by applicable precedent.

Section 23(b) of the Federal Power Act provides that it shall be unlawful for any person to construct, operate, or maintain any dam, powerhouse, or other works in any navigable water of the United States for the purpose of developing electric power without a license issued under the Act or a valid permit issued prior to the adoption of the Act in 1920. This section also provides that after 1935 no person shall construct a dam or other project works across, along, over, or in any non-navigable waters over which Congress has jurisdiction without first filing a declaration of such intention to construct with the Commission and provides the procedure for Commission determination of whether a federal license is necessary before construction can commence or whether the project work or works may be constructed without a license under the Federal Power Act upon compliance with State laws. The record in this case shows that in 1956 Georgia Power constructed the earth saddle-dike at the Mathis Terrora installation of its North Georgia Development without first filing a license application or a declaration of intention. Under these circumstances the backdating of the license of the North Georgia Development is consistent with the precedent of the Commission's opinion in *Public Service Company of New Hampshire*, 27 FPC 830, 832 (1962), also known as the *Androscoggin* opinion, where we stated:

> The construction of any project works subsequent to the enactment of Section 23(b) of the Act of 1935 without the concurrent filing of a license application or declaration of intention plainly violates that section. There is little room for dispute that licenses for such projects should be made effective not later than the date of construction of such project works.

The Commission's authority to backdate an applicant's license in a case involving an unauthorized construction of a project works in violation of Section 23(b) of the Federal Power Act has been upheld in *Central Maine Power Company* v. *Federal Power Commission*, 345 F. 2d 875 (CA1–1965); and in *Bangor Hydro-Electric Company* v. *Federal Power Commission*, 355 F. 2d 13 (CA1–1966).

Factually, the Mathis Terrora dike is a new project works of substantial size, measuring about 370 feet in length. It was built at a cost of $661,709 to replace an original saddle-dike which was considered to be no longer safe. Notwithstanding the Examiner's description of the construction as being in the nature of a repair job, the record shows that the new dike was erected downstream and separate from the original dike as a replacement works, and that the original dike was not at that time repaired, but in fact was breached after the completion of the new project works. Reference to Commission precedent shows that we have repeatedly held that the backdating of an applicant's license to the date of construction of a project works is appropriate where such project works involves the replacement of an old dam by a new one. See *Wisconsin Public Service Corporation*, 5 FPC 548 (1946); *Public Service Company of New Hampshire*, 27 FPC 830, 832 (1962); *The Northwest Paper Company*, 32 FPC 1413 (1964); *International Paper Company*, 33 FPC 291 (1965).[1] We find no basis in this record for according a different treatment to the applicant's replacement dike than we accorded the replacement dams in the cases listed above. The Commission's files show that the Secretary of the Commission advised Georgia Power long before the date of construction of the replacement dike that the North Georgia Development, including Mathis Terrora, was subject to the licensing requirements of the Federal Power Act. Whether Georgia Power agreed with this advice or not, it nevertheless was under an obligation to file a declaration of intention with the Commission prior to its construction of the replacement dike. See *Bangor Hydro-Electric Company* v. *Federal Power Commission*, 355 F. 2d 13 (CA1-1966); *cf. Wisconsin Public Service Corporation*, *supra*. Under these circumstances, as the court pointed out in *Central Maine Power Company* v. *Federal Power Commission*, 345 F. 2d 875 (CA1-1965), it is neither discriminatory nor a true penalty for the Commission to treat the applicant in the terms of its license as the Commission would have treated Georgia Power had the latter complied with the statute when it should have. Certainly, the Commission is justified in safeguarding its administration of the Act to avoid placing a premium on noncompliance with the requirements of the Act.

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[1] Although the Commission has been consistent in its backdating policy with respect to project works constructed in violation of Section 23(b) of the Act, it appears that through error we have not been entirely consistent in effectuating that policy. In a brief order in *Central Maine Power Company*, 28 FPC 302 (1962), and without discussion, we failed to backdate the license for Project No. 2284 where a section of the dam was replaced in 1946 without the licensee's having complied with Section 23(b) of the Act. To the extent that this order can be said to be inconsistent with the conclusion in *Public Service Company of New Hampshire*, *supra*, reiterated herein, we believe that the views expressed in the above cases in which we have focused upon the problem, rather than in the brief order in *Central Maine*, must and should prevail.

Consideration has been given to the applicant's request that the backdating of its license, if found to be warranted, should be limited to its Mathis Terrora project works and should not be applied to the entire North Georgia Development. On this point we agree with staff that the six dams, generating facilities, primary transmission lines, and other installations of the North Georgia Development, although constructed separately at different dates, nevertheless constitute one project, and should be covered under one license with an effective date of January 1, 1956. The record shows that these dams and their generating and transmission facilities are integrated and together form a comprehensive plan for the development of the Tallulah-Tugalo watershed, that they actually develop 100 percent of the "head" of the watercourse, and that there is no reasonable basis in engineering, economics, conservation, or law to require that each unit of the development be licensed separately. The issuance of one license for the entire project is fully in accord with Commission precedent. See *The Montana Power Company*, 15 FPC 1330, 1335 (1956); *Alabama Power Company*, 18 FPC 257, 260 (1957); *Duke Power Company*, 20 FPC 360 (1958); *The California Oregon Power Company*, 23 FPC 59, 61 (1960).

The functional unity of the different facilities of the North Georgia Development was as fully operational in 1956, when the Mathis Terrora saddle-dike was replaced, as it is at the present time. Plainly, had Georgia Power met its statutory obligation in 1956 by filing a declaration of intention with the Commission prior to its construction of the Mathis Terrora dike, it would have enabled the Commission at that time to have considered the very same factual background which now leads us to find that the entire North Georgia Development should be covered under one license. There is no inequity in now placing the applicant in the very same position it would have occupied in 1956 had it then complied with the requirements of Section 23(b) of the Act.

### *The Transmission Lines*

The Commission found in its order of May 7, 1964, that the twelve transmission lines listed below, although not included in Georgia Power's application, were nevertheless parts of the "project" as defined in Section 3(11) of the Federal Power Act, and were to be included in the license.

| Lines | Kilovolts | Approximate length in miles |
|---|---|---|
| 1. Burton-Nacoochee | 38 | 3.8 |
| 2. Nacoochee-Terrora (2) | 38 | 6.0 |
| 3. Terrora-Dillard | 38 | 14.0 |
| 4. Terrora-Tallulah Lodge | 110 | 2.3 |
| 5. Tallulah Falls-Tallulah Lodge (2) | 110 | 2.0 |
| 6. Tugalo-Tallulah Lodge | 110 | 5.0 |
| 7. Tugalo-Commerce | 110 | 35.0 |
| 8. Yonah-Commerce | 110 | 29.0 |
| 9. Yonah-Commerce to Tallulah Lodge (tap) | 110 | 7.0 |
| 10. Tallulah Lodge-Elberton | 110 | 58.0 |
| 11. Tallulah Lodge-Gainesville | 110 | 34.0 |
| 12. Cornelia-Clarksville | 38 | 7.0 |
| Total | | 203.1 |

The Examiner held that the above lines are not primary lines under Section 3(11) of the Act, stating that although they "are indispensable currently for carrying power away from the hydro plants when generating," they are now used primarily for the purpose of transmitting and distributing power generated elsewhere to serve consumers in the area of the six hydro plants. In its exceptions staff maintains that the contested lines, other than Cornelia-Clarksville,[2] must be included in the license as parts of the North Georgia Development because their principal purpose is to carry power from the project plants when the latter are generating at full capacity, and that when so utilized, these lines do not carry power from other sources. For the reasons set forth below, we agree with staff.

Section 3(11) defines a licensed "project" as follows:

> project means complete unit of improvement or development, consisting of a powerhouse * * * and * * * the primary line or lines transmitting power therefrom to the point of junction with

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[2] Staff recommended in its brief before the Examiner that the Cornelia-Clarksville 38 kv line be excluded from the license for the North Georgia Development.

> the distribution system or with the interconnected primary transmission system * * *

The plain import of the statute is that a hydro project, when considered as a complete unit, shall include the transmission facilities necessary to carry the power generated by it to a point of connection with a distribution system or with an interconnected primary transmission system. The applicant contended and the Examiner found that in this case the primary lines were limited to short stubs which carried energy from the hydro projects to six substations located near the project works. We find this concept unacceptable. Reference to Commission precedent shows that in 1939 the Commission rejected a substantially similar contention advanced by The Montana Power Company with respect to its Flathead plant transmission lines, Project Nos. 1407 and 5. The Montana Power Company there proposed to utilize 201 miles of transmission line to transmit energy from Flathead to points of junction with distribution systems at Thompson Falls, Missoula, and Anaconda, Montana. This 201-mile line did not extend all the way to the Flathead Project, but was connected by a line 1500 feet in length. Montana Power claimed that only the 1500-foot line was part of the licensed project, and that the 201-mile line was part of its interconnected primary transmission system. The Commission found that the 201-mile line, although serving as an interconnection between the distribution systems at Thompson Falls, Missoula, and Anaconda, was principally a primary line transmitting energy from Flathead to points of junction with these distribution systems, and that when carrying the maximum energy to be generated at Flathead, this line would not be able to carry any substantial amount of power from other sources to the distribution systems. The Commission accordingly concluded that this 201-mile line was part of the Flathead Project under Section 3(11). See 1 FPC 813 (1939). On appeal, the Commission's finding that the 201-mile line was a primary line because it would "serve principally as a primary line transmitting energy from the aforesaid Flathead plant to the points of junction with the distribution systems;" was sustained in *Montana Power Co.* v. *Federal Power Commission*, 112 F. 2d 371 (CA9–1940).

We find that the precedent of the *Montana Power Co.* case, *supra*, is controlling here in that the record shows that the contested lines listed below are necessary for carrying away the power generated by the applicant's hydro plants, and that these lines are used principally for the purpose of transmitting such hydro-generated power when the plants are generating at full capacity. In accordance with staff's recommendations we revise and consolidate the designation of these lines, reducing the total number from 12 to 9, as follows:

| Lines | Kilovolts | Approximate length in miles |
|---|---|---|
| 1. Burton-Nacoochee | 38 | 3.8 |
| 2. Nacoochee-Terrora (2) | 38 | 6.0 |
| 3. Terrora-Dillard | 38 | 14.0 |
| 4. Terrora-Tallulah Lodge | 110 | 2.3 |
| 5. Tallulah Falls-Tallulah Lodge (2) | 110 | 0.3 |
| 6. Tallulah Lodge-Tugalo-Commerce | 110 | 40.0 |
| 7. Tallulah Lodge-Yonah-Commerce | 110 | 36.0 |
| 8. Tallulah Lodge-Elberton | 110 | 58.0 |
| 9. Tallulah Lodge-Gainesville | 110 | 34.0 |

The above Tallulah Lodge-Tugalo-Commerce line is a combination of the two lines formerly designated as Tugalo-Tallulah Lodge and Tugalo-Commerce. The above Tallulah Lodge-Yonah-Commerce line similarly represents a combination of the two lines formerly known as Yonah-Commerce and Yonah-Commerce to Tallulah Lodge.

All of the lines enumerated above are required to carry the power generated by the six hydro plants of the North Georgia Development, an output of from 160,000 to 168,000 kilowatts[3] when the plants are generating at full capacity. At such times the power which is not used in the local areas adjacent to and north of the Burton, Nacoochee, and Terrora developments, flows to Tallulah Lodge, and from Tallulah Lodge such power and that generated at Tallulah Falls, Tugalo and Yonah flow south on the 110 kv lines to points of junction with Georgia Power's interconnected primary transmission system or distribution systems, *i.e.*, substations at Gainesville, Commerce, and Elberton, Georgia.

Inasmuch as Georgia Power uses the six hydro plants for peaking purposes, the 38 kv and 110 kv transmission lines of the project are utilized to deliver power and energy generated at other sources when the hydro plants are shut down during non-peaking hours, or when their use is limited during periods of low water flow. According to Georgia Power, the hydro plants carry no load for approximately 50 percent of the time, and do not operate at capacity for a greater portion of the remainder of the time. During such periods power produced elsewhere flows north from Gainesville, Commerce and Elberton to serve the demand in the area of the North Georgia Development. Although the power so imported is generally smaller in flow than the power exported by the hydro plants when generating at full capacity, the applicant argues that the essential purpose of its lines is established to be the transmission and distribution of power generated elsewhere to serve consumers in the area of the hydro plants, and that these lines therefore should not be considered as part of the project. We do not agree. It is plain that the North Georgia Development, as a hydro project, is not viable without the 38 kv and 110 kv transmission lines which are required to carry its power away from the generating sites. The use of these lines in non-peaking periods to carry power from other sources is a logical and inevitable utilization in any system where hydro power is used for peaking. This dual utilization does not, however, destroy the essential nature of the transmission lines as a necessary component of the complete hydro development.

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[3] The power generated at each of the six hydro plants when operating at full capacity is listed as follows: "Burton, 7,000 kilowatts; Tallulah, 72,000 kilowatts; Nacoochee, 6,000 kilowatts; Tugalo, 45,000 kilowatts; Terrora, 17,000 kilowatts; Yonah, 21,000 kilowatts."

Generation in certain instances may be higher than the above figures.

In arriving at the above determination we deem it appropriate to point out that our present holding does not preclude the possibility of future license amendments excluding some of these lines from the license in the event their function as primary project transmission lines is diminished. See Commission order amending license for Project No. 405, *The Susquehanna Power Company and Philadelphia Electric Power Company*, 21 FPC 161 (1959). Other factual situations and changed conditions may call for different conclusions. The records to be made in future proceedings need not necessarily follow the particular factual analyses employed in this case.

Consideration has been given the applicant's argument that the licensing of the contested line will be incompatible with the public interest in the event the project is recaptured at the end of the license term by the United States or licensed to another entity. However, not only is any project takeover speculative and conjectural, but, even assuming takeover of the project works, there is no requirement or assurance that the United States or a new licensee would wish to take over the primary lines in question.

*The Commission further finds that:*

(1) The findings heretofore made with respect to Project No. 2354 on May 7, 1964, 31 FPC 1134, at 1135–1136, are, to the extent not modified above, confirmed except that the finding therein numbered (8) is amended to read as follows:

> (8) The following transmission lines are primary lines and are parts of the project as defined in Section 3(11) of the Act and should be included in the license:

| Lines | Kilovolts | Approximate length in miles |
|---|---|---|
| 1. Burton-Nacoochee | 38 | 3.8 |
| 2. Nacoochee-Terrora (2) | 38 | 6.0 |
| 3. Terrora-Dillard | 38 | 14.0 |
| 4. Terrora-Tallulah Lodge | 110 | 2.3 |
| 5. Tallulah Falls-Tallulah Lodge (2) | 110 | 0.3 |
| 6. Tallulah Lodge-Tugalo-Commerce | 110 | 40.0 |
| 7. Tallulah Lodge-Yonah-Commerce | 110 | 36.0 |
| 8. Tallulah Lodge-Elberton | 110 | 58.0 |
| 9. Tallulah Lodge-Gainesville | 110 | 34.0 |

(2) Electric energy generated at applicant's North Georgia Development is transmitted into Georgia Power's high voltage transmission system in which it is commingled with energy generated at other power sources of Georgia Power. Electric energy from this system is transmitted across state lines at various points including a point northeast of Tallulah Falls where the lines of Georgia Power interconnect with lines leading to the Duke Power Company in South Carolina.

(3) Applicant's six hydroelectric installations described in the Commission's order of May 7, 1964, completely develop at the present time a 29-mile stretch of the Tallulah and Tugalo Rivers, and the project works which comprise the North Georgia Development should be included in one license.

(4) The Examiner's findings on "Other Matters," set forth at pages, *infra*, 646, 647, of his initial decision in numbered paragraphs 1 through 3, should be confirmed.

*The Commission orders:*

(A) The Commission's order issued on May 7, 1964, 31 FPC 1134, is confirmed, except that the transmission lines therein enumerated in finding of fact number (8) are amended to include only those lines designated in finding of fact number (1) of this opinion and order.

(B) With respect to the transmission lines designated in finding of fact number (1) of this opinion and order, the Commission reserves the right to revise such designation at a later date by addition, deletion, or modification, so that the license of the project works shall include at such later date those transmission lines which at that time are utilized by the project as primary lines within the meaning of Section 3(11) of the Federal Power Act.

(C) The provisions of paragraph (C) of the Commission's order of May 7, 1964, which subject the license to the terms and conditions of Form L-3 (Revised November 1, 1963), shall, in respect of Article 26 of Form L-3, be revised to read as follows with respect to the license herein issued:

*Article* 26. The right of the Licensee and of its transferees and successors to use or occupy navigable water of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, except that if the Licensee in accordance with then existing Commission regulations makes timely and sufficient application for a renewal or a new license, its license shall not expire until such application shall have been finally determined by the Commission.

*Commissioner Carver dissenting in part.*

CARVER, *Commissioner, dissenting* in part:

I would affirm the Examiner on one issue. Georgia Power Company was found by him to have responded reasonably to the invitation of this Commission in *Public Service Company of New Hampshire* (Androscoggin), 27 FPC 830, to seek a license for a constructed project "backdated" to April 1, 1962, for the purpose of computing Section 10(e) charges. The cases cited by the Examiner, particularly *Central Maine Power Company*, 28 FPC 302, squarely support his position. The discussion by the Commission about the "rule" in *Androscoggin* relates to a dictum contained in a footnote, and the rigidity of meaning ascribed to the word "construction" in Section 23(b) is a policy decision of the Commission today, not a command of the Congress of 1935.

I have assiduously reviewed all the prior cases on or near the subject, including those cited by the Examiner and by the Commission. I can only conclude that the wellsprings of the Commission's harshness today lie elsewhere. The casual calumny of the Commission which decided *Central Maine*, in effect charged with inadvertently overlooking a 257-foot dam replacement in an order issued within weeks of *Androscoggin*, leaves me speechless; to detail my analysis of the cases in the circumstances would be futile.

Therefore, I dissent.

## INITIAL DECISION

### OF THE PRESIDING EXAMINER ON LICENSE (MAJOR) FOR CONSTRUCTED HYDROELECTRIC PROJECT

(Issued March 1, 1966)

WESTON, *Presiding Examiner:* On the northeast, the State of Georgia is bounded from South Carolina by the Chattooga River, which joins the Tallulah River to form the boundary Tugalo River, which in turn joins other rivers and streams to form the Savannah, which bounds the two States to the sea.

Northeastern Georgia and the neighboring area of South Carolina is semi-mountainous, with elevations up to 3,000 (plus) feet. Standard atlases show at least two lakes in the area (Burton and Tallulah Falls), which have been formed in back of dams constructed in connection with hydroelectric projects of Georgia Power Company and its predecessors.

There are six dams in all, located at intervals over twenty-nine river miles, and using in the 38-mile reach of the Tallulah and Tugalo Rivers a fall of 1,198 feet in height from mean sea level. See Application filed March 18, 1963, pp. 1-2; Exhs. 48 and 100. Four of the dams are located on the Tallulah River, at points southwest of the Chattooga River, and entirely within the State of Georgia. They are, in descending order—

1. *Burton*. The dam, some 135 feet in height, was constructed in 1919,

impounding a 2,775 acre lake, with about 87,000 acre feet of usable storage in 50 feet of drawdown. The generating units were installed in 1927.

2. *Nacoochee.* The dam and powerhouse were constructed in 1926. About 90 feet in height, the dam impounds a 240 acre reservoir, with no seasonal storage.

3. *Mathis-Terrora.* The main dam and saddle-dike are at Mathis, and were constructed in 1915. The Terrora generating facilities were constructed in 1925. The dam is about 125 feet high, impounding about 834 acres of reservoir, with no seasonal storage.

4. *Tallulah.* The dam was constructed between 1911 and 1914. Generating capacity was finalized in 1920. The dam is about 140 feet high, and the lake has an area of about 63 acres, with no seasonal storage.

Two of the dams are located on the boundary Tugalo River. They are, in descending order—

5. *Tugalo.* The dam and generating facilities were built in 1923, just below the confluence of the Tallulah and Chattooga Rivers. The dam is about 170 feet high, and backs up a reservoir of about 597 acres.

6. *Yonah.* The dam and generating facilities were built in 1925. The dam is about 90 feet high, and impounds a reservoir of some 325 acres.

These six hydro dams completely develop the water power resources of the continuous flow of the Tallulah River—Tugalo River watercourse. Each dam in effect backs water up to its upstream counterpart. There is therefore no unused "head."[1]

Applicant succinctly describes how the North Georgia Development operates (Exh. 84):

> * * * Burton Project is operated for seasonal storage and the remaining five downstream projects make use of this storage on a daily regulating basis. The six projects comprising the development operate as an integrated unit to meet the peak load of the applicant's system and make the best use of the water.

Coordinated operation of the hydro plants is highly desirable for the sake of efficiency in water usage and consequent cost-saving. Impounded water from Burton which is released should be and is used successively by the lower hydro dams in its downstream flow.

In terms of land and water use, both for recreation areas (which have been highly developed and abound), and for "head," the North Georgia Development is concededly the "project"—using the term in the general sense —"best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes," in the language of Section 10(a) of the Federal Power Act. Georgia Power's application of March 18, 1963 is for a single license for its "North Georgia Development" comprising "six hydroelectric projects." (Application, p. 1.) The matter was docketed and treated as an application for a single license, and a single license, designated as Project No. 2354, was issued by Commission order of May 7, 1964, 31 FPC 1134.

On brief, Georgia Power insists that the North Georgia Development should be designated and treated as six separate "projects" in the statutory sense, because they were not (1) authorized, or (2) constructed, at the same time, but at six separate intervals "beginning with Tallulah in 1913 and ending with the installation of generating units at Burton in 1927." (Br. 4, Application 1.) Furthermore, Georgia Power points out that each of the six hydro units is concededly (3) an entity complete and capable of operation by itself and sometimes (*e.g.*, in the case one or more of the other hydro plants is out of service) so operated; coordinated in normal operations but not necessarily to be regarded as one "project" in the statutory sense.

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[1] Downstream from Yonah, the Federally-owned Hartwell dam backs water about 50 miles upstream, to complete the total water use.

The reason for the issue—one statutory project as six projects—is found in the provisions of the order issuing the license, next considered.

### *The Back-Dated License*

In its application, Georgia Power asked for a license for a term of fifty years from the date of its issuance. In its order of May 7, 1964, the Commission issued a license effective January 1, 1956 and terminating December 31, 1993. Annual charges under Section 10(e) "for the purpose of reimbursing the United States for the costs of the administration of this Part" (Part I of the Federal Power Act; originally the Federal Water Power Act) are, under the license, to be computed on the entire North Georgia Development beginning on January 1, 1956. The back-dated charges amount to $100,251.23. Additionally, by necessary implication, the license requires that the amortization reserve requirements of Section 10(d) of the Act have a starting point of January 1, 1956, applicable to the entire Development. The back-dating was not based on specific findings of fact, but was explained as being in accordance with "the criteria set forth in our April 25, 1962 Opinion No. 357 and order issuing license to Public Service Company of New Hampshire for Project No. 2288 (27 FPC 830)." The order notes that "an earth dyke was built at Mathis in 1956 to replace the original concrete dyke structure."

*The New Construction.* The fact is, that the back-dating of the license is supported by Staff on the basis of unauthorized[2] construction work performed in 1956 at the Mathis-Terrora unit of the North Georgia Development—the construction work consisting of the placement of an earth dam behind (downstream from) a concrete dike which was part of the 1914–1918 closure of the Tallulah River at Mathis.

The reservoir at Mathis originally consisted of (1) a concrete main dam across the river channels, and (2) a concrete dike which closed a depression, or "saddle," at one side of the natural basin and about 2,500 feet from the main dam. Some time prior to 1956, it was found that the dike had bowed in a downstream direction. The main body of the dike had settled and rotated to some degree on its concrete footing; the "rotation and settlement was continuing, and the cumulative movement made the integrity of the cut-off wall questionable. * * * a sudden failure of that foundation was possible with little or no prior warning from exterior surface appearances." (Tr. 157.)

Correction of the condition was by way of the earth dam, and the breaching of the original dike (which remains in place and otherwise intact) with slots.

It is clear and undisputed that the earthen replacement of the dike closure was not an improvement or addition to Georgia Power's productive property and capacity. The dike was located "just upstream from a Federal highway with attendant commercial and residential areas." The main reason for replacing the dike was "to eliminate the threat to life and property not owned by the applicant." (Tr. 159.)

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[2] Section 23(b) of the Act makes it unlawful, *inter alia*, to construct dams on navigable waters without a license. Section 23(b) also requires that those intending to build dams "or other project works" on non-navigable waters "over which Congress has jurisdiction under its authority to regulate commerce" to file a declaration of intention, whereupon there is to be a mandatory Commission investigation. If on the investigation the Commission finds that the interests of interstate commerce would be affected, then the issue arises, whether or not the license should be granted.

The new saddle-dike cost $661,709.00. In 1956 dollars, this represents 2.86 percent of the total cost of the Mathis-Terrora facilities, and .69 percent of the cost of the entire North Georgia Development—which is itself a relatively minor generating property of Georgia Power. In the overall view, it must be apparent that the new dike is in the nature of a repair to one element in the existing hydro facility at Mathis-Terrora, rather than the creation of a new facility.[3]

Staff contends that characterization of the nature and extent of the work done at Mathis is irrelevant; "the inquiry, in the language of Section 23(b), is simply whether Applicant constructed a project work in 1956." (Br. 17.) Further, since the Mathis saddle-dike was replaced without either declaration of intention or application for license under 23(b), back-dating of the license for all six hydro units is warranted, because "had the Applicant filed a declaration in 1956 as the law required it would have been required to pay charges from that year for all of the North Georgia Development." (Br. 27.) These simple facts and contentions form the first issue.

*The Androscoggin case and antecedent policy.* At the outset, it is well to note that, had Georgia Power filed a declaration in 1956, it is by no means clear that the Commission would have asserted jurisdiction over the Mathis project, or over the other units in the Development. As summarized in *Androscoggin*, the policy established on May 19, 1958 in *Carolina Aluminum Company*, 19 FPC 704, which "was foreshadowed by the Commission's decision in *Montana Power Company*, 15 FPC 1330 (April 23, 1956)" was, to issue "50 year licenses effective as of the date on which its jurisdiction over the river in question was determined" on the view that "the Act does not require any company to apply for a license until such time as an authoritative determination has been made that the stream in which the company operates is navigable." *Public Service Company of New Hampshire*, ("Androscoggin") 27 FPC 830, 835 and footnote 8, p. 836. It is entirely uncertain and speculative what the Commission would have ruled on the navigability question, had the matter been presented by Georgia Power's hypothetical declaration in 1956 that it proposed to replace the Mathis saddle-dike.[4]

The essential facts of the *Androscoggin* case are these: (a) The original dam, known as the Gorham Project, was built in 1894, and rebuilt in 1903, 1927 and 1928. Other changes in the facilities were made during the intervening years, and the turbines were replaced in 1937. (b) By order issued July 24, 1958 in *New Hampshire Water Resources Board*, 20 FPC 99, the Commission found that the Androscoggin River was a navigable watercourse throughout its entire length. (c) In 1958 and 1959, without Section 23(b) notice or other relationship to the Commission, Public Service Company of New Hampshire removed the entire Gorham Project dam and replaced it with a new dam. (d) On December 27, 1960, Public Service Company of New Hampshire applied for a license for the project.

On these facts, the Commission made the license, issued April 25, 1962, effective as of July 1, 1958 "the first day of the month in which we determined jurisdiction" over the Androscoggin River in the *New Hampshire Water Resources Board* case cited above. This action was based on applicant's (27 FPC at 834):

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[3] As will further appear, the rather inflexible rules applied by Commission Staff for back-dating because of new construction should in fairness hinge in part on a realistic appraisal by the Staff of the nature and extent of the construction.

[4] The question of navigability or other jurisdictional basis was reserved in Georgia Power's application filed March 18, 1963, and it was stated that the application was filed to avoid litigation. Jurisdiction was conceded in the reply brief filed October 11, 1965 "in view of the recent decision of the Supreme Court in *Federal Power Commission v. Union Electric Company,* 381 U.S. 90 (1965)."

> flagrant breaches of statutory duty * * * when it (a) failed to apply for a license even after our determination of jurisdiction over the Androscoggin in Docket No. E-6807; and (b) replaced its dam without filing either a license application or a declaration of intention, one or the other of which submission was required by Section 23(b) whether the Androscoggin was navigable or not. In the latter connection, it should be pointed out that if Applicant, subsequent to 1935, had built an entirely new project without securing the requisite authorization, we would not hesitate to adopt the date of such construction as the effective date of its license. We see no reason for different treatment merely because the unauthorized construction took the form of a replacement of an existing facility.

The Commission continued by announcing a general rule, applicable to the case at bar (27 FPC at 834):

> * * * In future cases which do not involve a prior finding of navigability as to the subject river, an unauthorized construction subsequent to 1935 or other unusual circumstances (e.g., the incurrence by the Commission of substantial administrative, investigative, or litigative expenses directly attributable to the applicant's recalcitrance) our policy will be to tender licenses effective as of the beginning of the month in which the present order is issued, *i.e.,* April 1, 1962. Our reason for not making future licenses effective as of the date of their issuance is that to do so might encourage still further delay in filing the license applications which the law requires.

It is clear that Georgia Power relied on this language when it filed its application of March 18, 1963. (Tr. 160.) Georgia Power's petition is for a license effective April 1, 1962 rather than July 1, 1956. What are the precedents?

In *Western Massachusetts Electric Company,* 32 FPC 129, the Commission, pursuant to application filed December 31, 1962, on July 15, 1964 licensed a constructed project on the Deerfield River. The Commission found that in 1945, there had been construction "to enhance the stability of the dam and to improve its hydraulic characteristics," although no "major changes" had been made in the project works since 1935. (32 FPC at 129.) The Commission issued a license effective April 1, 1962.

According to the record in the case at bar, the 1945 physical changes in the *Western Massachusetts* case were actually "extensive," and "in the same class with that of Mathis." (Tr. 162-163, describing changes to spillway, volumes of water accommodated and face of dam.) Yet the license was not back-dated.

In *Central Maine Power Company,* 28 FPC 302, the Commission, pursuant to application filed October 20, 1960, on August 8, 1962 licensed a constructed project on the Androscoggin River. The Commission found that "Apparently there have been no major additions or alterations to the project structures since 1920." (28 FPC at 302.) The Commission issued a license effective July 1, 1958, "the first day of the month in which we determined the Androscoggin River to be a navigable water," and terminating December 31, 1993, in accordance with the *Androscoggin* principles discussed above.

According to Georgia Power's interpretation of the evidence in *Central Maine,* a timber crib section of the dam there under consideration had been replaced in 1946 by a new concrete section about 257 feet long. (Br. 18, citing Exhibit L to Central Maine's application.) Staff agrees with this interpretation, citing the Commission's finding, 28 FPC at 302, that "the concrete section on the Brunswick side was constructed in 1946 to replace a portion of the old dam." Staff says that the Central Maine construction "warranted a back-dated license," but that the "mistake" there made does not justify departure in the case at bar from "the criteria of *Androscoggin*." (Reply Br., p. 4.)

On analysis, it would seem more appropriate to conclude, as does Georgia Power, that in the Commission's language, "construction" warranting back-dating prior to April 1, 1962 means *major additions or alterations to the project structures*, as quoted above, rather than necessary repair work as done in the *Central Maine* case and at Mathis in the case at bar. According to Staff's contention, the Commission 3½ months after issuing *Androscoggin*, issued an inconsistent decision in *Central Maine*, involving the same river. This contention cannot be accepted. Note that the Commission's language about "unauthorized construction in the form of a replacement," to paraphrase part of the first main quotation, above, from *Androscoggin*, is in the context of a hypothetical situation in which an applicant post-1935 has built an entirely new project without Commission approval. Certainly back-dating because of replacement must have some limits; minor items of equipment in a pre-1935 project are no doubt constantly being replaced and would not appropriately trigger the application of a retroactive license with important adverse financial consequences.

Other cases abound; each turns on its own facts. *Central Maine Power Company*, 32 FPC 334, 733, affirmed 345 F. 2d 875 (CA1-1965), involved an old project that was "in ruins" when rehabilitation started in 1937, and the new generators commenced operations in 1939 and 1950. The license was therefore made effective January 1, 1938. *Bangor Hydro-Electric Company*, 33 FPC 278, rehearing denied July 12, 1965, affirmed January 13, 1966, 355 F. 2d 13 (CA1-1966), involved the construction of a new powerhouse in 1938–1939, apparently adding 3,000 kilowatts to the existing 5,400 kilowatts (see 33 FPC at 278 and 280); the license was therefore made effective January 1, 1938. *Niagara Mohawk Power Corporation*, 32 FPC 1404, Opinion No. 481 on rehearing issued November 15, 1965, on appeal to CADC, No. 19887, principally involved back-dating of certain projects only to the date when the Commission determined that the project rivers were navigable; and also involved one project newly constructed in 1941 on the navigable Erie Canal, which therefore received a license effective July 1, 1941. *The Northwest Paper Company*, 32 FPC 1413, rehearing granted by order of February 5, 1965, involved a timber crib dam "replaced by a concrete structure including modern flood control gates" in 1948–1949, wherefore the license was made effective July 1, 1948.

*Other factors bearing on application of Androscoggin rules.* A. In speaking of "flagrant breaches of statutory duty" warranting back-dating, 27 FPC at 834, the Commission introduces a factor in the nature of *scienter* as having a bearing on the issue.[5] In this connection, it is to be remembered, first that the rivers in the case at bar, unlike the Androscoggin, have never been found to be navigable. Second, that like, the Public Service Company of New Hampshire, had either chosen to do so, Georgia Power could have filed with the Commission notice of its intention to reconstruct the Mathis saddle-dike in 1956. Third, that as to the Georgia Power situation, it is by no means clear and certain that the Commission would, upon the occurrence of such a filing, have taken jurisdiction to license the entire North Georgia Development, or even the Mathis-Terrora project. See the *Carolina Aluminum* case cited above, and discussion of Commission policy in the 1950's in the *Androscoggin* decision, 27 FPC at 835–836; *cf. contra*, Staff speculation, Br. 26–27. There is no showing, and no facts basing the conclusion from the present record, that Georgia Power was guilty of a gross or flagrant disregard of the requirement to file notice of the proposed Mathis construction work, in the context of the 1956 regulatory atmosphere.

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[5] Webster's Third New International Dictionary defines "flagrant" as "extremely, flauntingly, or purposefully conspicuous usually because of uncommon evil, unworthiness, unpleasantness or truculence."

B. In its discretion, the Commission in April, 1962 adopted certain criteria warranting back-dating for certain constructions of project works after 1935. These criteria were not predicated upon a rule-making proceeding, which would have attracted industry-wide notice and consequent opportunity to participate. See Section 4 of the Administrative Procedure Act, governing "any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law and policy." (APA, Section 2(c) definition.) In such a proceeding, a variety of specific factual circumstances would have been elicited as background for Commission evaluation as to the proper ultimate coverage of the rule. It is, of course, fruitless to speculate what the Commission would have provided in such a rule. But in applying *Androscoggin* principles, there is undoubtedly room for the exercise of sound discretion insofar as the facts of a given case, not considered by the Commission in that case, may warrant. Otherwise, these principles really amount to a retroactive application of new Commission policy on applicants who have had no notice or opportunity to be heard.

*Conclusion.* Under the circumstances of the case at bar, the record does not disclose an adequate basis for back-dating the license of the North Georgia Development, or of any unit in that Development, because the replacement of the Mathis saddle-dike was not a major addition to or alteration of the project structures. The license will, in accordance with the rule laid down in *Androscoggin* (27 FPC at 834) be made effective as of the beginning of the month in which that decision (which, as we have seen, prompted the instant application) was issued; *i.e.*, April 1, 1962. There is no issue as to the termination date for the license, which is December 31, 1993.[6]

*One Project or Six Projects?* Georgia Power devotes considerable space in its briefs, and displays legal ingenuity, in arguing that each of its Tallulah-Tugalo River hydro units is a separate statutory project. Stripped of characterization, its argument is based on the fact that the six units were not authorized at the same time or constructed at the same time, and that each unit is capable of independent operation.

These considerations are not important. The important thing is, that in terms of efficient hydro-electric operations and the recreational and other features of the shorelines, applicant must, consonant with its obligations as a public utility, coordinate and master plan at all times its release of water beginning at Burton and ending at Yonah.[7] And under Section 10(a) of the Act, the Commission must adopt and license as the "project" the planned development which—

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[6] The advancement of the termination date "gives adequate weight to the unlicensed history" of the North Georgia Development prior to April 1, 1962, for the reasons spelled out in *Androscoggin*, 27 FPC at 833–834.

[7] Undoubtedly, Yonah also coordinates with the Federal Hartwell project located downstream, the waters of which back up nearly to the Yonah Dam. If Hartwell were also in the Georgia Power system, it would no doubt also be part of the "project."

> in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use and benefit of interstate or foreign commerce * * * [and for other beneficial purposes].

The overriding considerations bearing on the "judgment of the Commission" are that six units are (1) integrated, (2) actually develop 100 percent of the "head" of the water-course, (3) have no reasonable basis in engineering, economics, conservation, law or other pertinent considerations to be treated separately in respect of licensing, and (4) form the comprehensive plan for the development of the watershed. They are therefore one project.[8] *The Montana Power Company*, 15 FPC 1330, 1335; *Alabama Power Company*, 18 FPC 257, 260; *Duke Power Company*, 20 FPC 360; *California Oregon Power Company*, 23 FPC 59, 61; *Pacific Gas & Electric Company*, 2 FPC 516; *Georgia Power Company* 21 FPC 296; and *Arkansas Power & Light Company*, 26 FPC 549.

### *The Transmission Lines*

The order of May 7, 1964, found that the "following described transmission lines which were not included in the application for license are parts of the 'project' as defined in Section 3(11) of the Act and should be included in the license * * *":

| Lines | Kilovolts | Approximate length (miles) |
|---|---|---|
| 1. Burton-Nacoochee | 38 | 3.8 |
| 2. Nacoochee-Terrora (2) | 38 | 6.0 |
| 3. Terrora-Dillard | 38 | 14.0 |
| 4. Terrora-Tallulah Lodge | 110 | 2.3 |
| 5. Tallulah Falls-Tallulah Lodge (2) | 110 | 2.0 |
| 6. Tugalo-Tallulah Lodge | 110 | 5.0 |
| 7. Tugalo-Commerce | 110 | 35.0 |
| 8. Yonah-Commerce | 110 | 29.0 |
| 9. Yonah-Commerce to Tallulah Lodge (tap) | 110 | 7.0 |
| 10. Tallulah Lodge-Elberton | 110 | 58.0 |
| 11. Tallulah Lodge-Gainesville | 110 | 34.0 |
| 12. Cornelia-Clarksville | 38 | 7.0 |
| Total | | 203.1 |

On brief, the Commission Staff has revised its designations in part and has dropped the contention that the Cornelia-Clarksville line is part of the project. As revised, the lines in issue are designated as follows:

The Burton-Nacoochee, the two Nacoochee-Terrora, the Terrora-Dillard, the Terrora-Tallulah Lodge, and the two Tallulah Falls-Tallulah Lodge lines remain as in the order of May 7, 1964, except that the two last-named lines are given an approximate length of 0.3 mile. Tugalo-Tallulah Lodge and Tugalo-Commerce lines (items 6 and 7 above) are combined under the designation Tallulah Lodge-Tugalo-Commerce, with a length of about 40 miles. Yonah-Commerce and Yonah-Commerce to Tallulah Lodge are combined under the designation Tallulah Lodge-Yonah-Commerce, extending about 36 miles. The Tallulah Lodge-Elberton and -Gainesville lines remain as before, but the Cornelia-Clarksville line "should not be included in the license." (Staff Brief, p. 56.)

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[8] Georgia Power correctly contends that this conclusion of fact does not necessarily mean, as Staff would have it, that the Mathis construction work, if it warrants back-dating under *Androscoggin*, requires back-dating of the whole license. For project accounting purposes, the Mathis unit could be set off separately.

The Commission order of May 7, 1964 does not state the basis on which it was decided that the given lines were part of the project. Under Section 3(11) of the Act, there should be included in the licensed project works:

> The primary line or lines transmitting power therefrom [from the power house and other parts of the hydro unit] to the point of junction with the distribution system or with the interconnected primary transmission system * * *.

The problem is, that all of the lines in question sometimes transmit power *from* the six hydro units when they are generating, and also transmit power to and through the substations which form a part of such hydro units when they are not generating at all or not generating enough power to supply the load served off such lines—almost all of the time on almost all of the lines, as we shall see. There are a great variety of transmission situations that can and do occur, depending on transient and everchanging circumstances such as: the water levels back of the project dams, the load in the vicinity, the amount of other generation from Georgia Power plants, and the receipts of power from Duke Power and other companies in the southeastern United States power grid. Most of the time, power is being supplied to the communities and customers served off the designated lines* from sources other than generation from the six hydro units; *i.e.*, the flow is towards and through the six substations and the hydro plants, mostly from steam plant generation and an intertie with Duke Power Company at the Tallulah Lodge substation. Georgia Power considers the 38 kv lines listed above as part of its "primary distribution system" and the 110 kv lines as part of its "primary transmission system." (Exh. 29.)

In order to visualize the physical situation, it should be noted that the generating equipment in each of the six hydro units connects primarily with its own transmission substation located nearby. The substation and all connections leading from the generating equipment up to it are concededly part of the hydro project works. In a typical case—

> The transmission substation is located at the entrance or west end of the power house and consists of steel frames, buses, disconnecting switches and cable necessary to control station from switchboard. The substation connects to a single 38,000 volt line. The transmission lines [*i.e.*, leading through the substation] are excluded from the project. (Burton Project, Exhibit M to Application filed March 18, 1963.)

Thus, depending upon what generation is "on the line," the power flowing through the transmission line in the substation may be power produced from the project hydro plant, or power produced elsewhere, or a mixture of the two. Only when the project plants are operating at system peaks can we visualize the lines as being saturated with project power and delivering power to Gainesville, Commerce and Elberton.

*Legislative history.* The legislative history is of little or no help in determining what Congress meant in distinguishing the "primary line" of the hydro unit, which is part of the project works, from the lines which are part of the "distribution system" or "interconnected primary transmission system." There is no reference in the debates or elsewhere to the specific language of Section 3(11), which first appeared in House Report 715 on S. 1419, 65th Cong., June 28, 1918, from the Committee on Water Power. However, there is some background.

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* The communities include Dillard, Rabun Gap, Mountain City, Clayton, Tiger, Wiley, Clarksville, Habersham, Cornelia, Gainesville, Toccoa, Commerce, Tallulah Falls, Hartwell, Elberton, and many more. Population in the area is growing, and load is growing at a rate of over 8% per year.

Between 1912 and the enactment of the Federal Water Power Act in 1920, several points of view developed as to the proper scope of recapture—that is, as to the principal point involved in the Section 3 definitions. Early viewpoints would have envisaged recapture of extensive transmission facilities from the hydro dam to the distribution system, or facilities dependent on power developed under the license. See National Waterways Commission Report of March 25, 1912 (Senate Document 469); S. 8033, 62d Cong. (Cong. Record, February 17, 1913, p. 3267); H.R. 16053, 63d Cong., as amended (Cong. Record, July 23, 1914, p. 13240); H.R. 16673, 63d Cong.; S. 322, 64th Cong.; S. 1419, 65th Cong.

Senator Norris, speaking against extensive recapture—the point of view contained in S. 322, 64th Cong.—said (Cong. Record, March 1, 1916, p. 3354):

> My amendment, it will be seen, limits that part of the transmission system that must be taken to the transmission system from generating plant to initial point of distribution. This is a vastly different thing from the bill as it now stands. As it now stands the bill in this respect provides for additional things to such an extent that the taking over is absolutely impractical and in effect makes the grant perpetual.

Representative Kent of California said, in regard to the broad recapture provisions (Cong. Record, July 5, 1916, pp. 10454–55):

> I feel that this bill if enacted may be wrapped around the legs of posterity like so much barbed wire when they try to escape from it. In order to recover the property we may be forced to buy everything dependent for its usefulness upon the power generated * * *.

There is a further indication that Congress did not envisage a broad takeover of lines connected to hydro units. In the debate on S. 1419 (*supra*), referring to the language later incorporated into Section 3(11), the following colloquy took place (Cong. Record, September 3, 1918, p. 9908):

> MR. ANDERSON. I have some curiosity to know why the gentlemen in his amendment excepted transmission lines and distribution lines.
>
> MR. SIMS. The bill itself practically excepts them. Both the bill handed to us by the President and the bill brought to us by Mr. Merrill excepts them—one not to exceed the actual cost and the other the net investment * * *. I cannot think that they would want to sever it from any other project property except the transmission lines and distribution plants, because in the transmission one line may be 10 miles and another 100 miles, and one a high tension line and another a low tension line, and the distributing plants may be much larger in some places than in smaller places. The object is to bring the power plant itself into control of the United States rather than the distributive facilities or the transmission lines.
>
> MR. ANDERSON. What would be the value of a water power severed from the transmission line?
>
> MR. SIMS. What would be the value of a transmission line severed from the water power? That would be left to negotiation; the Government certainly would not destroy, dismantle and stop the transmission of electricity.

It is true, but unimportant in considering this colloquy, that Mr. Sims' amendment dealt with annual charges rather than being "directly related to the recapture problems." (Staff Reply Brief, p. 8.) The general sense of the debates and the legislative proposals, read in connection with the language of Section 3(11) as finally adopted, looks towards a restrictive rather than a broad coverage of the term "primary line" includible in the given project. It was clear to Senator Norris and to Mr. Sims in 1918, and it would seem clear in 1966, that insofar as recapture is concerned, there has been no contemplation of a broad construction of a Government purpose to take over transmission and service systems linked to the hydro projects.

*Authorities.* In *Montana Power Company* v. *Federal Power Commission*, 112 F. 2d 371 (CA9–1940), the Commission had denied Montana Power's application for a minor part transmission line license designated as (prospective) Project No. 1407, and had authorized the line as an amendment of the license for the existing Flathead Project No. 5, on a finding that the line "will serve principally as a primary line transmitting energy from the aforesaid Flathead plant to points of junction with the distribution systems of the applicant at Thompson Falls, Missoula, and Anaconda, Montana, in addition to serving as an interconnection between those distribution systems * * *. (*Montana Power Co.*, 1 FPC 813, 814, June 13, 1939.)

This finding was based on the further finding that when carrying "the maximum energy that can be generated at the Flathead plant, after that project has been completed and is operating at its ultimate installed capacity, the transmission line cannot carry any substantial amount of power from other sources" to any of the distribution systems mentioned above. (1 FPC at 814.)

The court affirmed, on the basis that the Government findings were supported by substantial evidence and had a "rational basis," in that (112 F. 2d at 374):

> A rational basis for the Commission's conclusions might be the low cost of Flathead power. From experience the Commission may know, or be perfectly sure, that power generated at the government project at Flathead will be sold at a cost so low that the entire output thereof will be constantly in demand. If so, it can be seen that the line in question will be used for the transmission of that power. At any rate, we cannot say that there is no rational basis for the conclusions of the Commission.

The Commission order contains no *rationale* supporting the findings; the opinion of the Ninth Circuit does not explore the subject in satisfactory depth. Georgia Power's brief points out facts developed from the record in the *Montana Power* case: Flathead was a "*base load* project operating at 100% load factor," and, referring to the existing Thompson Falls-Flathead line and the Flathead-Missoula-Anaconda proposed line, the project "alone was expected to utilize all the capacity of these lines all the time." (Br. 21–23.) There is a real distinction between this situation and the present circumstances, where (1) about half the time, none of the six hydro units operate at all, therefore furnish no project power at all into the lines in question; (2) for about 80–90 percent of the time, no project power reaches Staff's contended termini of the lines at Gainesville, Commerce and Elberton, but the power flow is from other generation to serve load in the vicinity of the hydro dams; and (3) there is no showing that the lines were constructed for, or serve the principal purpose of, conveying hydro power away from the hydro project.

Staff's proposed application of the "existing judicial interpretations" covering the distinction between primary project lines and distribution/interconnected primary transmission lines is not a model of clarity. According to Staff, project lines should be defined as follows (Tr. 268)—

(1) The line must connect a hydroelectric project with the point of junction with the distribution system or with the interconnected primary transmission system.

(2) The line must serve to transmit electric energy from the hydroelectric project in question.

(3) Although the line may serve not only as a part of a hydroelectric project but also as part of a primary interconnected system, nevertheless, if the line is a primary line directly connected with a project and serves to transmit energy therefrom to a point of junction with a distribution system or with the interconnected primary system, the line should be included in the study as to whether it should be recommended for inclusion as a part of the project.

It is apparent that points (1) and (2) merely restate the statute and the issue. All of Georgia Power's lines connect with the North Georgia Development; much of its system line to the south, southwest and southeast of Gainesville, Commerce and Elberton (termini suggested by Staff) transmit electric energy generated in the Development. Point (3) comes close to the present situation, but is of no concrete help. For instance, what standards are disclosed for the guidance of the student who makes the "study as to whether it [the line] should be recommended for inclusion as a part of the project?"[10]

Actually, as contended by Georgia Power (Reply Br. 9), Staff in this case is proceeding on the novel theory that the primary line, subject to recapture and the other burdens cast by the Act on the "project works," extends to the most distant points on an interconnected system which will be reached by project power at full generation. The novelty of the theory is of course not fatal if the theory is supported by substantial considerations of statutory interpretation, but these have not yet appeared.

Pragmatic tests of statutory interpretation are suggested by the opinion in *Pacific Power & Light Co.* v. *Federal Power Commission*, 184 F. 2d 272 (CADC-1950). There, a transmission line ran between applicant's hydro project and another generating plant, and crossed lands owned by the United States. The Company applied for a license for that part of the line which crossed Government land, and the Commission "declined to issue the amendment, on the ground that it had no jurisdiction to do so." (184 F. 2d at 273.)

The stipulated issue, whether the Commission had jurisdiction to license transmission lines conveying hydroelectric energy and crossing Government land "regardless of the basic nature, purpose and function to be served by such lines," necessarily implied that the line was not a primary project line, and the Court held that this line was not a "project work" subject to license. The Court further observed (184 F. 2d at 275):

> Reservoirs, power houses, and transmission lines merely as such were not the considerations which led Congress to pass the Act. The concern of Congress was in the development of water resources.

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[10] It would seem that Staff's definition is in accord with a Commission memorandum dated October 27, 1944 (Exhibit 102) which recites similarly vague "criteria" or "tests" of what lines should be included in a given project, and continues:

> It should be borne in mind that conditions are constantly changing and lines which come within the definition of "project" today may not be so classified at some future time. However, if a line is included, the United States might be in a better bargaining position upon recapture if it wanted the line than if the line had been left out of the project works originally.
>
> The Commission has decided as a matter of policy to include lines within project works where they meet the tests outlined above. Where there is doubt as to whether such tests are fully met, such doubt should be resolved in favor of inclusion. * * *

This memorandum of October 27, 1944 is mentioned in this Decision for purposes of enlightment, but has not been used or considered in arriving at a decision of the issues herein, because it appears to be an internal communication not having the intent or effect of controlling or influencing the legal issues, which must be decided on the facts of record and openly published policy.

> The stipulated question is whether the Commission has authority over the line regardless of its nature, purpose or function. Our answer is that, unless the nature, purpose and function of the line is such as that it is a part of a power project, it does not fall within the statutory definitions which establish the authority of the Commission, and is not to be forcibly enveloped in the statutory language by the compulsion of a congressional purpose inadequately expressed.

Let us, therefore, examine the "nature, purpose and function of the lines here in question, by reference to the actual use of such lines.

*Further review of facts and conclusions from record.* In 1964, the best hydro year on record, the North Georgia Development did not supply any net power at all to Gainesville, Commerce or Elberton during the peak months of June, July, August and September. There was a net flow of power north from these points, to serve local needs in the area of the Development. (Tr. 405.)

In 1956, a relatively dry year, the Development generated 258.6 million kwh, while the load to the north of Gainesville, Commerce and Elberton amounted to 425.5 million kwh. No deliveries could have been made to these communities during 11 of the 12 months in 1956. (Tr. 406.)

In 1963, an average hydro year, the six plants in the Development carried approximately full load only 3 percent of the time, (Tr. 407) and carried no load at all for about 50 percent of the time. The direction of power flow over the lines in the vicinity of the six plants varies, depending on the amount of generation, *pro tempore*, by Georgia Power on the one hand and its interconnected systems—T.V.A., Duke Power and South Carolina Electric and Gas —on the other hand, but while the hydro plants are not generating, it is clear that the lines in question are functioning as transmission and distribution lines, not as primary project lines (Tr. 409.)

During the 50 percent of the year 1963 when some power was produced by the Development, power nonetheless usually flowed north from Gainesville, Commerce and Elberton to serve demand in the area of the Development.

The use of the Development is also curtailed by two factors—the age of the plants, which brings about mechanical failures and out-of-service conditions for substantial periods of time, and the heavy use of the reservoir-lakes for recreation during June, July, August and the first part of September. "These are the critical months in which the Georgia Power Company system has the greatest demand not only for capacity but for energy also. Even so, it has been the policy, of the Company in recent years to maintain these lakes at full pond during the summer, and to draw them down only in case of an extreme emergency that cannot be handled otherwise." (Tr. 413.)

It appears quite clearly that the nature, purpose and function of the lines under consideration are primarily for transmission and distribution of power generated elsewhere to serve consumers in the area of the six hydro plants in northeastern Georgia—at least, as of the current era. But the lines are also indispensable currently for carrying power away from the hydro plants when generating. The record does not disclose the primary function and purpose of the lines when first installed. What has been the Commission practice in prior cases?

*Analysis of a situation picked at random.* To date, there has never been developed in Commission literature a *rationale* of project "primary lines." Therefore, it has become appropriate to examine specific licenses as issued by the Commission, to see what the actual practice has been. No clear pattern emerges from this examination of precedents. However, to take a random instance, it is noted that in *Central Maine Power Company*, 32 FPC 334, rehearing denied 32 FPC 733, affirmed 345 F. 2d 875 (CA1–1965), the licensee was ordered to amend its license "to include the following described transmission facilities: the 6.9 kv generator leads and the 115 kv transmission line from the 6.9/115 kv substation to the Wyman-Gulf Island 115 kv line." (32 FPC at 336.) This line appears to be a very short stub, extending from Central Maine's "Williams Project" in the Kennebec River, which functions to connect Williams with Central Maine's 115 kv transmission grid. See FPC Bureau of Power, "Principal Electric Facilities, Northeastern," 1964, Government Printing Office; see also Exh. J-2, General Map, to application in the *Central Maine* case.

As appears to be almost universally the case, no issue was raised as to the inclusion or exclusion of this Williams to Wyman-Gulf Island stub, and there is no discussion of the matter in the Commission orders. The existence of this Commission required condition, however, led to further examination of Central Maine's "primary" lines, as distinguished from distribution or interconnected primary transmission lines, as denominated in the licensing history of this utility.

In the *Harris Project*, 13 FPC 1076, located in the sparsely populated north of the State, 29 miles of 115 kv line from the project to Wyman was included in the license.

In the *Bar Mills Project*, 15 FPC 1402, a 38 kv tap to applicants' grid was included.

In the *Androscoggin, Deer Rips* and *Gulf Island Projects*, 28 FPC 64, no lines were included.

In the *Shawmut Project*, 31 FPC 486, no lines beyond the substation (step-up transformers), were included.

In the *Weston Project*, 32 FPC 1111, no lines were included.

In the *Wyman Project*, 32 FPC 1279, lines to the switching structure were included.

Central Maine, on this showing, has only an insignificant amount—29 miles out of 686.1 pole miles in its 115 kv grid—of "primary" line in its licensed projects. Yet analysis of this company's Annual Report to the Federal Power Commission for 1964 (Form No. 1) shows that Central Maine's licensed hydro projects furnish a substantial portion of its system requirements over several hundreds of miles of line.[11] The Commission's position in licensing Central Maine appears to be quite inconsistent with Staff's position in the case at bar.

*Analysis of statistics.* As of 1945, there were 25 privately owned electric companies with hydraulic plant capacity in kws exceeding steam plant capacity.[12] Growth capacity in the succeeding years has been provided mostly by steam. For all 25 companies:

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[11] Central Maine has: 4 steam plants, total capacity 262,000 kw (227,000 kw base load), located near the coast; 14 hydro plants, total capacity 250,065 kw, located inland, principally in the sparsely settled north. Steam furnished 48.90% of 1964 energy, hydro 41.62%, purchases 94.8%. Monthly peaks ranged from 404,075 kw in May to 502,872 kw in December. At system peak, some hydro power must flow over Central Maine's 115 kv grid at least as far south as Augusta (Maxcy switching station). Yet no lines in the grid south of Wyman (*e.g.*, to Farmington, Livermore Falls, Rumford, Detroit, Bucksport, Winslow, Augusta and Lewiston) are included in Central Maine's hydro licenses. The 29 miles of line from Harris to Wyman appears to be a rather long tap, or stub, joining Harris to the Central Maine system.

[12] These were: Alabama Power Company, California Electric Power Company, Pacific Gas & Electric Company, Southern California Edison Company, Ltd., Idaho Power Company, Bangor Hydro Electric Company and subsidiaries, Central Maine Power Company, New England Power Company, Minnesota Power & Light Company, The Montana Power Company, Public Service Company of New Hampshire, Central Hudson Gas & Electric Company, Rockland Light & Power Company, Carolina Power & Light Company, Nantahala Power & Light Company, Portland General Electric Com-

| | 1945 | 1955 | 1963 |
|---|---|---|---|
| Hydraulic capacity—kilowatts | 4,312,233 | 6,210,769 | 9,008,606 |
| Steam capacity—kilowatts | 1,989,218 | 7,475,322 | 16,715,925 |
| Total capacity—kilowatts* | 6,308,045 | 13,742,658 | 25,892,670 |
| Hydraulic capacity—percent of total | 68.4 | 45.2 | 34.8 |
| 100 percent hydraulic companies | 5 | 2 | 2 |

*Total includes small non-hydro and -steam capacity; generally internal combustion.

From this one table, a number of inferences can be drawn relevant to the issue of the proper definition of "primary line" in the case at bar. Using Staff's criteria (which, for emphasis, will be restated later in this section):

1. A major portion of the transmission grids of each of the 25 companies would be primary lines subject to the burdens of the Act.

2. As of 1945 five companies, and as of 1963 two companies, would consist largely, if not entirely, of primary lines, assuming no major purchases of electricity.

3. The Section 3(11) distinction between the "primary line and the "distribution system/interconnected primary transmission system" is fluid and ever-changing; it is dependent on the facts for the time being as to what lines primarily transmit hydro power at system peak.

4. There is a steady attrition in number and percentage of primary line as steam generation steadily takes over the predominant part of total capacity.

5. In licensing a given project, neither the Commission nor the licensee would know what lines were to be subject to Commission jurisdiction as part of the project during the life of the license, or subject to recapture at the expiration of the license.

6. Amendment of licenses to add or subtract primary line would become a significant part of the work of the Commission. Annual changes in kinds of generating capacity, load centers and system peaks would base claims by licensees and Staff for redefinition of primary lines.

7. A depressing effect would result on the development of new hydroelectric projects insofar as such projects would serve peaking loads into existing or future transmission lines now newly defined as "primary." See Applicant's Reply Brief, pp. 26-27, referring to the proposed Laurens Shoals project on the Oconee River.

* * * * * *

Staff's criteria for the inclusion of lines in a licensed project may be summarized as follows: all lines are to be included which, at the time of system peak, primarily transmit energy from the hydro generators to those certain system substations or switching structures on applicant's general transmission/distribution system where the hydro power blends with a predominant flow of energy generated from steam or other sources.

The considerations adduced so far indicate that these criteria are entirely too broad to be either (a) acceptable legally or (b) feasible in operation.

*The public or consumer interest.* Finally, as part of the pragmatic tests as to the propriety of including the lines in question as part of the "project

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pany, South Carolina Electric and Gas Company, Utah Power & Light Company, Central Vermont Public Service Corp., Green Mountain Power Company, Northern States Power Company, (Wisc.), Wisconsin Michigan Power Company, Pacific Power & Light Company, Puget Sound Power & Light Company and The Washington Water Power Company.

This and all other material in this section is derived from "Statistics of Electric Utilities in the United States, 1963" (issued by the Federal Power Commission, 1965, Government Printing Office).

works," we should examine the question as to the useful purpose to be served by inclusion or exclusion.

Georgia Power testifies that inclusion "will undoubtedly introduce delays and additional costs in our construction program," because its system in the area is growing rapidly, and, citing particular examples of current changes to the lines (Tr. 63):

> * * * Growth requires changes in generating capacity, transmission and distribution lines, and substations. If the twelve lines are licensed it will be necessary to get permission from the Commission before making any changes in them. This would require unnecessary work, particularly in administration and accounting, and probably cause delays in the accomplishment of the necessary system changes.

The expense, inconvenience and time-lag involved in obtaining Commission approval of line changes is not a major consideration in most circumstances. But it is of importance in the case at bar, because Staff advances no useful purpose whatsoever served by the inclusion of the lines as "primary," or jurisdictional. In the event of Government recapture of the North Georgia Development, it will neither benefit nor detriment the consumers if the lines in question are excluded from the project works. If current conditions persist after takeover, the Government will undoubtedly sell the project power to Georgia Power Company at the transmission substations; as Congressman Sims foresaw in 1918 "the Government certainly would not destroy, dismantle and stop the transmission of electricity." (Legislative history, *supra*. p. 640.)

*Conclusion.* It is abundantly clear from the foregoing that Congress must have had in mind in using the term "primary line" the stub line (of whatever length) appurtenant, to the "complete unit of improvement or development" which constitutes the "project." An analogy may well be made to the case of the railroad siding appurtenant to, and part of, the facilities of a manufacturing plant. The "primary line or lines transmitting power" from the hydro generating equipment, part of the project works envisaged by Section 3(11) of the Act, are held to be the lines which feed energy from such equipment into the general electrical system of the licensee. Here, this is accomplished at the six substations located near the project works, which are properly included by Georgia Power as part of such works. The transmission lines passing through such substations were properly excluded from the project in Georgia Power's application, and the proposed license will be amended accordingly.

### *Other Matters*

1. On brief, Georgia Power has not pressed its contentions, made in its application for rehearing, concerning the propriety of certain of the Articles in the Commission's standard Form L-3, "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States," 30 FPC 1658, revised November 1, 1963, issued contemporaneously with *South Carolina Electric & Gas Company*, 30 FPC 1338, 1346, 1349.

2. Staff voluntarily suggests a basis for changing Article 26 of Form L-3 "to conform to Section 9(b) of the Administrative Procedure Act and the policy implied therein." (Br. 53-54.) The change spells out the licensee's right to continue licensed operation until determination of its application for renewal, if any. The change will be incorporated in the amendments to the license hereinafter ordered.

3. In view of the decision issued January 28, 1966 in *Rumford Falls Power Company* v. *Federal Power Commission*, 355 F. 2d 683 (CA1-1966), the license condition suggested in the Commission's order of April 7, 1965, 33 FPC 711,

"Joint Use of Water Power Project Works or Parts Thereof for certain Water Supply Purposes," Docket No. R-249, will not be imposed. The record in the case at bar contains no evidence or argument as to the propriety of such a condition for the North Georgia Development, and no basis for an inference that such a condition might be appropriate.

### *Findings of Fact*

The findings of fact heretofore made herein on May 7, 1964 (31 FPC 1134, at 1135-1136) are hereby confirmed, except that finding of fact number (8) is deleted and the subsequent findings (9), (10) and (11) are renumbered (8), (9) and (10).

### ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission, that:

(A) The order heretofore made herein on May 7, 1964 (31 FPC 1134, at 1136-1139) is hereby confirmed, except that

(B) The license granted in paragraph (A) of such order is effective as of April 1, 1962 (rather than January 1, 1956) and terminating December 31, 1993.

(C) The provisions of paragraph (C) of such order, which subject the license to the terms and conditions of Form L-3 (Revised November 1, 1963), shall, in respect of Article 26 of Form L-3, revise the terms and conditions there set forth, in respect of the license herein issued, to read as follows: *Article 26*. The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, except that if the Licensee in accordance with then existing Commission regulations makes timely and sufficient application for a renewal or a new license, its license shall not expire until such application shall have been finally determined by the Commission.

(D) The provisions of additional Article 28 of such order, imposing annual charges, are effective for the period beginning April 1, 1962 (rather than January 1, 1956), and otherwise at the rates and terms contained in such additional Article 28.

(E) The provisions of additional Article 30 are deleted and the subsequent additional Articles 31, 32 are renumbered 30 and 31.

ROBERT M. WESTON,
*Presiding Examiner.*

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-175

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 29, 1967)

On December 19, 1966, Southern Natural Gas Company (Applicant) filed in Docket No. CP67-175, as supplemented on December 29, 1966, and February 16, 1967, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to receive and transport natural gas purchased from Shell Oil Company (Shell)* in the West Delta Blocks 105 and 133 Fields, offshore Louisiana, and the transportation of natural gas for plant use, fuel, loss and shrinkage to Shell's proposed processing plant, all as more fully set forth in the application, as supplemented, in this proceeding.

Specifically, Applicant proposes the following:

(a) To construct and operate approximately 31.9 miles of 18-inch pipeline extending south from Bay Huertes gate on Applicant's existing West Block 30 Line to Block 104 in West Delta Block 105 Field;

(b) To construct and operate approximately 9.9 miles of 12¾-inch pipeline extending southwest from Block 104 to Block 122 in West Delta Block 133 Field;

(c) To construct and operate approximately 11.5 miles of 26-inch loop pipelines between Lake Washington Field and the Mississippi River on Applicant's Lake Washington Line;

(d) To construct and operate a multiple line crossing of the Mississippi River; and

(e) To install and operate various valve assemblies, and related facilities, located on Applicant's existing West Delta Block 30 Line near Lake Washington Field, to enable Applicant to deliver gas to Shell for processing and to accept the redelivery of gas after such processing. (Shell will pay Applicant two cents per Mcf for the shrinkage resulting from processing and fuel use.)

The estimated cost of the proposed facilities is $10,967,870, which cost will be financed initially by bank loans which will be repaid from cash from current operations or from permanent financing. An additional cost of $195,500 for the aforementioned valves to effect delivery to and receive gas from Shell's plant will be reimbursed by Shell.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on March 29, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act

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*On March 24, 1967, Shell in Docket No. CI67-808 was granted a temporary certificate authorizing the proposed sale to Applicant. The proposed sale will be made pursuant to a contract between Applicant and Shell, dated October 3, 1966, as amended.

and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of the subject facilities and the proposed transportation of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities and to transport natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(2), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

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## OPINION NO. 519

## NORTHERN NATURAL GAS COMPANY, DOCKET NOS. CP65-1, CP65-91, CP65-338; NATURAL GAS PIPELINE COMPANY OF AMERICA, CP65-169; TRANSWESTERN PIPELINE COMPANY, PHASE II, CP65-208, CP65-236, CP65-237

### OPINION AND ORDER GRANTING AND DENYING CERTIFICATES

(Issued March 30, 1967)*

### *Syllabus*

1. In comparative hearing, Northern's proposal to construct and operate separate pipeline is preferred to Transwestern proposal to exchange gas with Northern since record shows Northern's unit costs to be lower, except at initial level of service. PP. 655-657.
2. In approving Natural's proposal to construct and operate separate pipeline—as opposed to Transwestern's proposal—Commission notes that an exchange agreement is designed for mutual benefit, while here, proposed exchange would result in more detriments than benefits to Natural; thus exchange cannot be approved because of its benefits to Transwestern. P. 657.

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*Initial decision appears on p. 677. Opinion No. 519-A and order issued May 31, 1967 denying rehearing, 37 FPC 1005.

3. **Commission cannot allow customers in one part of the country to pay more for gas in order to benefit gas consumers in other areas. P. 657.**
4. **In addition to unreliability for future of Transwestern's rates, principal objections to its proposal relate to Natural's need to develop and expand its gas supply—if dependent on Transwestern for gas supplies, Natural could be under a severe competitive disadvantage. PP. 658, 659.**
5. **In light of disparities existing between Northern and Natural, case here is particularly unsuited for experimentation with novel notion of jointly-owned pipeline. P. 660.**
6. **Commission *finds* that long term advantages resulting from certification of two separate pipelines, as proposed, outweigh possible short term advantages which might be realized through construction of joint pipeline. P. 661.**
7. ***Rejecting* Transwestern proposal and City of Chicago's joint pipeline suggestion, Commission *finds* that public interest requires certification of separate facilities for Northern and Natural. P. 661.**
8. **In view of prior experience with development of reserves in Permian Basin, and fact that Northern's most recent reserve showing is nine months old, Northern is required to file up-to-date data establishing adequacy of 26-inch line to transport proven reserves from Delaware Basin, or alternatively amendment of its application for appropriately sized line. P. 662.**
9. **Evidence on potential reserves of Panhandle area was properly excluded. P. 662.**
10. **Examiner properly overruled objections to proffered evidence on transmission costs—while there may be infirmities in such evidence, it relates to the weight rather than admissibility. P. 662.**
11. **In a proceeding under Section 7 of the Natural Gas Act, Commission *grants* and *denies* applications for certificates of public convenience and necessity.**

**Commissioner Ross *dissenting.***

***F. Vinson Roach, Jack C. Osborne, Daniel B. O'Brien, Justin R. Wolf, Charles A. Case, Jr.* and *David B. Ward* for Northern Natural Gas Company**

***Charles C. McDugald, William W. Brackett* and *Paul E. Goldstein* for Natural Gas Pipeline Company of America**

***Raybourne Thompson, James W. McCartney, W. H. Drushel, Jr.* and *H. Curren Huston* for Transwestern Pipeline Company**

***John W. Scott* and *Louis L. DaPra* for Minnesota Valley Natural Gas Company**

***C. Frank Reifsnyder, Stanley S. Harris* and *E. G. Najaiko* for El Paso Natural Gas Company**

***Robert M. Olson, W. L. Cole* and *John Ormasa* for Pacific Lighting Service and Supply Company, Southern California Gas Company and Southern Counties Gas Company of California**

***Richard F. Babcock* and *F. P. Bosselman* for Peoples Gas Light and Coke Company and North Shore Gas Company**

***Jack F. Kinney* for Iowa Public Service Company**

***Justin A. Stanley* and *John L. McCausland* for Northern Illinois Gas Company**

***Joseph T. Morrow* and *Edward S. Schroer* for Northern Indiana Public Service Company**

***John F. Gaston* for Iowa Electric Light and Power Company**

***Charles R. S. Anderson* for Iowa Southern Utilities Company**

***Raymond F. Simon, Mathias M. Mattern* and *Martin F. Hogan* for City of Chicago**

*Mark W. Putney* for Iowa Power and Light Company
*Lloyd J. Marti* for Western Power and Gas Company
*Keith M. Stidd* and *Arvid M. Falk* for City of Minneapolis
*George C. Mastor* for Minneapolis Gas Company
*Arthur R. Renquist* for Northern States Power Company
*Sherman S. Poland* for Central Illinois Electric & Gas Company
*John A. Ferguson, Jr.* for Gulf Pacific Pipeline Company
*Richard Tuttle, J. Calvin Simpson* and *Lawrence Q. Garcia* for Public Utilities Commission of California and People of the State of California
*Edward J. Hartman* for Iowa-Illinois Gas & Electric Company
*Ray E. Cooley* for State Corporation Commission of the State of Kansas
*Owen J. Beatty* for Commissioner of Public Utilities, City of St. Paul, Minnesota
*George C. Pardee* for Metropolitan Utilities District of Omaha.
*C. Louis Knight* and *Agnes Mae Wilson* for the Staff of the Federal Power Commission

*Before Commissioners:* Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

O'CONNOR, *Commissioner*:

This proceeding concerns the proposals of Northern Natural Gas Company (Northern) and Natural Gas Pipeline Company of America (Natural) to construct and operate facilities to connect large supplies of contracted gas reserves in the Delaware Basin to their pipeline systems and the alternative proposals of Transwestern Pipeline Company (Transwestern) to transport through its West Texas and Panhandle lateral lines volumes of gas for Northern or Natural. Northern and Natural oppose Transwestern's application, preferring to construct their own facilities. The City of Chicago advocates a joint pipeline owned by Northern and Natural. The proceedings are now before us upon the initial decision of Presiding Examiner Allen C. Lande issued June 22, 1966, in which he issued, subject to review by the Commission, separate certificates to Northern and Natural and denied the proposals by Transwestern and the City of Chicago.

### PROCEDURAL AND FACTUAL BACKGROUND

The present case involves Phase II of several applications consolidated by Commission orders issued March 16 and May 12, 1965. Phase I dealt with a system expansion of Natural in Docket No. CP65–169 and an interim exchange agreement between Natural and Transwestern in Docket Nos. CP65–320 and CP65–325. The Examiner's decision granting certificates was issued August 3, 1965, and the Commission order adopting the Examiner's decision on August 13, 1965 (34 FPC 507).

After El Paso, Northern was the second pipeline to purchase natural gas in the Permian Basin. It now purchases about 20 percent of the Permian gas moving in interstate commerce, yet it has no connection between its mainline facilities and its Permian Basin facilities. It has obtained its gas by means of an exchange and transportation arrangement under which it utilizes the line of El Paso Natural Gas Company running from Plains, Texas, in the Permian Basin to Dumas in the Texas Panhandle area. Northern has now contracted with producers in the Coyanosa and Gomez Fields of the Delaware Basin, Texas, which is within the Permian Basin area, for 2.6 trillion cubic feet of gas reserves and is continuing to negotiate for more reserves. The Plains-Dumas line is presently fully utilized and cannot accommodate these volumes.

In order to obtain access to its Permian Basin reserves Northern filed the application involved here. In Docket No. CP65-1 filed July 1, 1964, it seeks a certificate authorizing the construction and operation of 42 miles of 24-inch pipeline to transport Coyanosa gas to its existing Permian Basin facilities at Kermit, Texas, at an estimated cost of $3,392,600, and has been granted a temporary certificate for this line. In Docket No. CP65-338 filed April 23, 1965, Northern seeks authorization for 12 miles of 24-inch pipeline to connect its Gomez Field reserves with the line proposed in Docket No. CP65-1 at an estimated cost of $1,015,600. In Docket No. CP65-91 filed October 6, 1964, it has applied for authorization to construct and operate some 365 miles of 26-inch pipeline and other facilities, which would connect its Permian Basin facilities with its main transmission system at Beaver, Oklahoma. The line would initially carry 225,000 Mcf per day but would be designed to have an optimum capacity of 450,000 Mcf per day. The estimated cost of the 26-inch pipeline is $33,013,500 and of all facilities proposed by Northern is $37,421,700.

Natural is in a somewhat similar situation. Its original Amarillo line built in 1931, and since expanded, extends from the Panhandle Field of Texas to the Chicago area. In recent years Natural has been unable to acquire sufficient additional reserves in the Panhandle area to balance its ever expanding needs. Therefore, it has acquired reserves in the Permian area and plans to acquire further reserves, for it believes that area has a vast potential for producing additional supplies of gas. The present application would allow Natural to construct facilities to connect its Amarillo line with its reserves in the Permian Basin.

In Phase I of these proceedings Natural was authorized to construct lines extending northeasterly from the Indian Basin and Dagger Draw Fields in the Permian Basin to a point of interconnection, in Eddy County, New Mexico, but these facilities are not now interconnected with Natural's Amarillo line. Rather they are interconnected with the Transwestern West Texas lateral and are used for the interim interchange of gas with Transwestern approved by the Commission on August 13, 1965, in Docket No. CP65-1 (34 FPC

507). In Docket No. CP65–169 filed December 11, 1964, Natural proposes to construct 230 miles of 24-inch pipeline and 26.2 miles of 20-inch pipeline extending from the existing terminus of the Amarillo line at compressor station 112 in Moore County, Texas, to a point in Eddy County, New Mexico, where connection will be made with the Indian Basin and Dagger Draw facilities. Natural also requests authorization to construct 3.5 miles of 8-inch lateral in Roosevelt County, New Mexico, to receive gas from the Bluitt Field, 5.93 miles of 30-inch loop line on the Amarillo line, and other appurtenant facilities, all at an estimated cost of $20,618,000. The initial capacity of Natural's proposed main Permian line would be 168,530 Mcfd, but it is designed for a future capacity of 450,000 Mcfd by the addition of compression.

Transwestern's system consists principally of a 30-inch pipeline which connects with two 24-inch supply laterals near Roswell, New Mexico, and extends westward to the California border where it delivers gas to Pacific Lighting Service and Supply Company. One supply lateral, called the Panhandle lateral, extends northeast from Roswell into the Panhandle-Hugoton-Anadarko areas of Texas and Oklahoma; the other, called the West Texas lateral extends southeasterly to the Permian Basin.

Transwestern has intervened and has proposed an exchange service with Natural and Northern by which Transwestern's Panhandle lateral would be used to serve Northern and Natural and their Midwestern customers rather than Transwestern's customers in California. On their part Northern and Natural would deliver to Transwestern volumes of gas, which would be available to serve Transwestern's customers in California. Certain additional facilities would be required on Transwestern's West Texas lateral to transport Natural's and Northern's gas to the point of intersection with the Panhandle lateral.

In Docket No. CP65–237 filed February 9, 1965, Transwestern proposes to take delivery of up to 158,000 Mcf of gas per day from Natural at a point of intersection between Natural's Indian Basin facilities and Transwestern's 24-inch West Texas lateral approximately 54.8 miles southeast of Roswell, New Mexico, and into its 8-inch Bluitt lateral, which is attached to its Panhandle lateral. Transwestern proposes to redeliver equivalent volumes to Natural at a point on its main Amarillo line at a point downstream from Natural's proposed Permian line delivery point. The estimated cost of Transwestern's facilities, taking into account those already certificated in the *Gulf Pacific* case[1] is $3,431,000.

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[1] *Transwestern Pipeline Company*, 36 FPC 176, Opinion No. 500, Docket No. CP63–204, *et al.*, issued July 26, 1966.

In Docket No. CP65-236 filed February 9, 1965, Transwestern proposes to take delivery of up to 225,000 Mcfd of gas from Northern at the point of interconnection of Northern's proposed Gomez and Coyanosa facilities and Transwestern's 24-inch West Texas lateral and to redeliver equivalent volumes at Northern's Beaver compression station in Beaver County, Oklahoma. Transwestern's cost for facilities would be $17,787,000. In Docket No. CP65-208 Transwestern proposed to construct a line to connect Northern's Kermit reserves with the Coyanosa Field; however, after Northern received temporary authorization in CP65-1 to build this line, Transwestern did not go forward with its proposal. Transwestern also proposes a combined exchange service with both Natural and Northern that is no different from that proposed in the separate dockets.

The City of Chicago, as well as the Suburban Rate Authority, advocate a single large pipeline to transport the Permian gas to the systems of Northern and Natural rather than separate pipelines but did not present any evidence on this matter. Although the Minneapolis Gas Company introduced studies made by Northern on such a joint pipeline, as discussed below, both Chicago and Suburban asked that the record be reopened to receive further evidence on this question.

The hearings in Phase II commenced on October 25, 1965, and, after continuances, terminated on January 21, 1966. The Examiner's decision was issued June 22, 1966. In it he issued, subject to review by the Commission, a certificate to Northern and to Natural to do what they proposed, denied the applications of Transwestern and refused to reopen the record to give further consideration to Chicago's joint pipeline proposal. The Examiner was of the opinion that Transwestern's showing with respect to its proposed service to Natural alone was better than its showing with respect to both Northern and Natural, but any cost advantage which Transwestern would have over Natural would probably vanish as the level of service increased. Furthermore, he thought that Natural should have independent access to the Permian Basin. The Examiner found that the joint pipeline would cost Northern slightly more than Northern's separate line, and this difference would increase still further if the load factor on the joint line should decrease. He thought this suggestion had been fully explored and that no further inquiry was warranted.

Exceptions to the Examiner's decision were filed by Transwestern, City of Chicago, and People of the State of California and the Public Utilities Commission of California. Briefs opposing exceptions were filed by Northern Illinois Gas Company, Illinois Power Company, Commission staff, Wisconsin Southern Gas Company, Inc., Natural, Northern, Central Illinois Electric & Gas Company, Iowa-Illinois Gas & Electric Company, and jointly by The Peoples Gas

Light and Coke Company and North Shore Gas Company. Motions for oral argument were filed by Transwestern and California.

Northern has shown that its proposal is economically and financially feasible and that it has an expanding market for the gas. It will be necessary for its proposed pipeline to carry 225,000 Mcfd immediately and 450,000 Mcfd by the fourth year of operations. It has also shown that it has adequate reserves under contract in the Coyanosa and Gomez areas of the Delaware Basin which is part of the Permian Basin area, and that the area has an excellent potential for future expansion.

Likewise, Natural has shown that its project is financially and economically feasible, that it has expanding markets and needs additional sources of gas, and that it has sufficient gas supplies for the initial use of the line but will need further reserves as the line is brought up to full capacity. We think that Natural may properly expect to procure such reserves because of the prolific nature of the Permian area. Apart from the alternative proposal made by Transwestern and the questions raised by Chicago with respect to a joint line discussed below, no substantial exception was taken to the Examiner's determination that the proposals of Northern and Natural meet the conventional requirements of public convenience and necessity, and in this respect, we specifically adopt his discussion and conclusions.

### TRANSWESTERN'S PROPOSED EXCHANGE

Transwestern has proposed an arrangement that it contends would offer economies for the benefit of itself, Natural, Northern and their customers. Transwestern, however, recognizes that there is no substantial cost difference between its proposal and Northern's proposal and therefore does not except to the Examiner's decision insofar as it grants a certificate to Northern. The record indicates that Transwestern's unit costs and proposed exchange rate will be lower than Northern's unit costs for its separate pipeline at the initial level of service (225,000 Mcfd), but will be higher than Northern's separate costs at higher levels of service. Under these conditions we can see no reason for requiring the Transwestern-Northern proposal, even apart from the disadvantages of such an exchange, as discussed below, and we shall adopt the Examiner's conclusion that Transwestern's proposal to serve Northern be denied.

With respect to its proposal to exchange gas with Natural the principal basis of Transwestern's argument is an alleged cost spread between the exchange service which it proposes and Natural's own costs. Thus for proposed deliveries of 158,000 Mcfd Transwestern's facilities would cost $3,431,000 but Natural's alternative facilities would cost $20,618,000. The cost of service for the Transwestern project on an incremental basis is substantially less at all levels of service.

Transwestern developed proposed rates for the exchange of gas with Northern and Natural based on incremental costs and value of service. Transwestern's proposed monthly charge to Natural represents the incremental cost of service for the facilities which it would be required to add to its existing system, and the proposed commodity charge represents one-half the difference between the incremental unit cost of Transwestern's project and the incremental unit cost of the alternative Natural project. Transwestern's proposed monthly charge would be $68,000 plus 3 cents per Mcf for the first 100,000 Mcf exchanged and one cent per Mcf for volumes in excess of this amount.

Assuming an exchange only with Natural and the delivery of the full volume of 640,000 Mcfd to the California companies as permitted Transwestern in the *Gulf Pacific* case,[2] Transwestern's witness testified that the monthly charge would be $30,500 and the additional charge 3.6 cents per Mcf. At the proposed 158,000 Mcfd level of service and a 66 2/3 percent load factor Transwestern's rate would amount to 4.46 cents as opposed to the 7.48-cent unit cost of a separate operation by Natural by its method of computation. At a higher level of service, 450,000 Mcfd, Transwestern's rate is estimated under its method to be 3.60 cents and Natural's cost to be 4.82 cents. Natural's method of determining cost for its own service was incremental in concept in that it was based upon the cost of operating its proposed Permian Line.

The staff developed a method for computing Transwestern's costs for serving both Northern and Natural. It was based on Transwestern's total cost of service for all of Transwestern's facilities which would be used in rendering the proposed service and the Mcf-mile method of cost allocation. At both the initial level of service, 158,000 Mcfd for Natural and 225,000 Mcfd for Northern, and at the proposed 450,000 Mcfd level for each company, Transwestern's unit costs were substantially less than the costs shown by Natural for its separate project. However, when Transwestern's witness applied the staff method, using a 6 2/3 percent rather than 6 1/4 percent rate of return, to Transwestern's costs in an exchange with Natural alone, the Transwestern unit cost at the 450,000 Mcfd level of service was found to be 4.70 cents per Mcf, only a little less than the 4.82-cent separate cost found by Natural.

Natural argues that incremental methods of determining costs have been rejected by the Commission for ratemaking purposes and should be rejected here. However, using what are, in effect, incremental methods Natural derived costs for Transwestern on the basis of jointly-used facilities and the Mcf-mile method of allocation, and, as we have seen, derived its own cost on the basis of its proposed Permian line. The results showed, using several methods, that its costs would be lower than Transwestern's except at the lowest (158,000 Mcfd) level of service. As the Examiner said, "Any cost advantage which Transwestern would have over Natural would be short-lived, and would probably vanish long before 450,000 Mcf per day pipeline capacity would be reached."

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[2] *Transwestern Pipeline Company, supra.*

The distance traveled by the gas had considerable bearing on cost. If Transwestern must deliver Permian gas under its exchange agreement, the gas would have to travel northwest on its West Texas lateral to Roswell, New Mexico, and then continue northeastward at right angles on the Panhandle lateral. Taking the distance from the junction of Natural's Dagger Draw and Indian Hill laterals to Transwestern's point of delivery to Natural about 26 miles downstream from its station 112 which is in Moore County, Texas, the distance is about 378 miles, while Natural's proposed separate line, and present facilities would involve transporting the gas only about 318 miles.

While we have referred to some of the cost computation made on the record in order to delineate the contentions of the parties, it is not necessary to make a determination as to the validity of any one method or to compute costs on our part, for we are of the opinion that our determination should not be based on such computations. The Examiner rejected the use of an incremental method of cost allocation in determining whether to certificate the Transwestern proposal or the separate Natural proposal, but for the reasons stated below it is not necessary for us to reach this question.

Transwestern argues that its proposed rates under the exchange agreement will generate revenues in excess of its incremental cost of service, and, as a result, Transwestern has agreed with its California customer, Pacific Lighting Service and Supply Company, to reduce its proposed price to Pacific Lighting. Such advantage to Transwestern and its customers should properly be considered in determining whether the proposed exchange agreement would benefit Transwestern as well as Natural. However, an exchange agreement is properly designed for mutual benefit. A benefit on one side therefore may not properly be used to offset a detriment on the other, and we find that there are more detriments to Natural than benefits to Natural and therefore cannot approve the exchange because of benefits to Transwestern. As we said in the *Rock Springs* case, *El Paso Natural Gas Co.*, 30 FPC 77, 90, we cannot allow the customers in one part of the country to pay more for this gas in order to benefit gas consumers in other parts of the country.

While the rates proposed by Transwestern reflect low incremental costs, they are subject to future hazards. In its proposed rate schedule Transwestern specifically reserves the right to propose such changes in its rates and services as it deems necessary. On an allocated cost basis the record indicates that as the volumes of exchange are increased whatever cost advantage inures to Transwestern at the 158,000 Mcfd level of service may disappear or be reversed at 450,000 Mcfd. The witness for Transwestern did not know whether he would be able to recommend continuation of the proposed rate after the first step-up in deliveries to 225,000 Mcfd expected in 1969. Since the proposed 158,000 Mcfd level of service will soon prove inadequate, it is not possible to rely on the continuation of Transwestern's proposed rate based on incremental costs.

Furthermore, the exchange arrangement presupposes, generally, that 140,000 Mcfd of gas will be available from the Panhandle area for delivery to Natural (or Northern) without long transportation. Transwestern's witness stated that he did not know how long Transwestern would be able to deliver up to 140,000 Mcfd from the Panhandle area to Natural. We note that Transwestern, subject to the requirements of the Natural Gas Act with respect to interstate sales, is free to make additional sales of its gas in the Panhandle area.

Even though an exchange of gas would be entirely possible without any Panhandle gas, it would necessarily be done at higher cost although Transwestern's Panhandle lateral has a sufficient optimum single line capacity of 370,000 Mcfd. As contemplated by Transwestern, if 140,000 Mcfd of gas is delivered from Panhandle sources, at the initial 158,000 Mcfd level of service, only 18,000 Mcfd would have to be transported northeastward in Transwestern's Panhandle lateral. If instead of the 18,000 Mcfd Transwestern were to transport 158,000 Mcfd for Natural from its Permian Basin supply points, it would have to install additional facilities costing $2,395,000. Larger deliveries of Permian Basin gas to Natural would entail even greater costs. This would result in a very substantial increase in cost over the $3,431,000 project proposed by Transwestern which would depend upon 140,000 Mcfd from the Panhandle area.

In addition to the unreliability for the future of Transwestern's proposed rates, the principal objections to the Transwestern proposal relate to the needs of Natural to develop and expand its gas supply. Natural has shown that, without reference to the St. Louis market, it will need at least 135,000 Mcfd to 185,000 Mcfd of additional pipeline capacity each year for the next three years. Because of the requirements of its contracts with producers Natural expects to take at least 200,000 Mcfd on a peak day from existing Permian Basin sources and about 75,000 Mcfd more each year from the same area.[3] While Natural has other sources of gas in the Texas Gulf Coast and Southern Louisiana areas, these do not provide alternatives for all of the market served by its Amarillo line, so that it is necessary for Natural to acquire and utilize Permian reserves.

In this context it is a handicap to Natural that when it needs more deliveries of gas from the Permian Basin, but not sufficient to justify independent construction of facilities, it will have to approach Transwestern, which is its competitor for gas supplies. Since this is an exchange arrangement not only does Natural have to obtain greater deliveries from Transwestern, but it must make greater deliveries to Transwestern. While we may assume that Transwestern would use its best efforts in behalf of Natural, it also owes a duty to its other customers, Cities Service Gas Company and Pacific Lighting, to obtain and keep available sufficient gas supplies to meet its obligations. Therefore, if Natural is dependent on Transwestern for gas supplies it could be under a severe competitive disadvantage in its ability to obtain the necessary gas to effect the additional exchange with Transwestern.

In contrast, if Natural were entirely responsible for obtaining its own supplies, it would not have to cooperate with its competitor but could aggressively enter into contracts with producers. It could make use of the budget-type authorizations provided in §157.7(b) of the Commission's Regulations, but this would not be possible if it were obtaining its gas deliveries from Transwestern. In short, to obtain a flexible gas supply and access to the prolific Permian Basin, Natural should be permitted to build its own pipeline. This would not preclude Natural and Transwestern some time in the future from entering into an exchange agreement.

### THE JOINT PIPELINE PROPOSAL

The City of Chicago contends that consideration should be given to the possibility that a single pipeline owned and operated jointly by Natural and Northern, rather than the proposed separate lines could result in substantial savings in transporting gas from the new fields in Permian Basin to existing main line facilities. Chicago suggests that the existing record indicates that such savings are likely and that, at least before the possibility is abandoned, the Commission should reopen the record to require the applicants and the Commission's staff to explore the question more thoroughly.

The Examiner found that with respect to studies of a joint line the record "has been satisfied on its basic points." He continued, "The possibility of a joint line has been raised and examined and the sound reasons for its rejection have been given on the record and in the briefs." He predicated this finding on the fact that a joint line, rather than resulting in substantial cost savings, would, when analyzed on a comparable basis, cost Northern more than would its proposed separate line. Further, he noted that "should Natural's flows on a peak day basis not keep up with Northern's *or* should Natural's load factor be less than 67 percent, as projected, Northern's costs would be increased substantially." For these and other reasons we agree that the joint proposal must be rejected.

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[3] At this rate. Natural would reach 450,000 Mcfd in approximately four years instead of 8 or 10 years as estimated by staff (Transcript 1616).

The hearing record reveals that both Natural and Northern gave consideration to the possible advantages of a joint pipeline but both, independently, decided that the conceivable advantages thereof were outweighed by the disadvantages. Northern and Natural produced their studies and working papers. Northern's studies, which were introduced in evidence by the Minneapolis Gas Company, showed the costs of 30 and 34-inch joint pipelines under various conditions of load compared with Northern's proposal for a separate pipeline. The Northern study indicates that under conditions which in actuality could not reasonably be expected to exist, between one-half cent and one cent per Mcf could be saved by constructing a single 34-inch pipeline to carry the volumes of gas Northern and Natural seek to transport through their proposed 26-inch and 24-inch lines. The difficulty with any such showing, as Northern's witness pointed out, is that based on the individual characteristics of each company, conditions favorable to a joint transportation effort not only do not presently exist, but are almost certain to become less likely of achievement as the two pipeline's needs and operations diverge over periods of time. The Natural study was not put into the record, though Natural's work papers were made available to Chicago which chose not to pursue the matter.

The evidence in the record demonstrates, above all, the extreme difficulty of any effort to evaluate the relative utility of a nonexistent joint facility with specific proposals for separate lines. In light of the disparities which exist between Northern and Natural this case is particularly unsuited for experimentation with the novel notion of a jointly owned pipeline. For example, Northern projects that it will utilize 225,000 Mcf per day of capacity in the first year of operation. Natural, in that same year, expects to take 158,700 Mcf. This poses a complex allocation problem which is complicated even further as the ratio of takes deviates in later years. With the addition of each increment of gas, the allocation would have to be revised, an eventuality which would necessarily breed uncertainty.

We do not mean to suggest that joint transportation facilities can never be shown to be more in the public interest than separate facilities. There may well be instances where the advantages of joint facilities will outweigh the obvious loss in certainty and flexibility for the individual participants. This, however, is not such a case. In addition to the reasons already noted, the two pipelines are, along with El Paso and Transwestern (who have their own individual lines in the area) competitors for the large new reserves coming on the market in the Permian Basin.[4] Northern has already filed (in CP67-10) for authority to construct facilities necessary to attach new reserves in the Hamon field of the Permian Basin. Both companies can be expected to make future additions, albeit at different rates and at different times. Therefore, it appears that to require Northern and Natural to construct and operate a joint pipeline facility would only inhibit their potential development.

Nothing in the record or of which we can take official notice indicates that in this case reopening the record would achieve anything beyond delay. In short, on this record, we find that the long term advantages which will result from certificating two separate lines outweigh the possible short term advantage which might be realized through the construction of a joint pipeline.

Based upon the foregoing we find that both the Transwestern transportation proposal and the City of Chicago's suggestion that a joint pipeline should be constructed must be rejected and that the public interest requires the certification of separate facilities for Northern and Natural. Accordingly, Northern and Natural's applications will be certificated.

There is one matter which we believe requires further consideration. Based on the record in this proceeding it is clear that Northern's proposed pipeline would be adequate to handle its proven reserves in the Delaware Basin which support its application. However, based upon our knowledge of the prolific nature of the Delaware Basin, we are concerned as to whether it might be in the public interest for Northern to construct a larger diameter pipeline rather than perhaps having to loop the 26-inch line in the near future.

If fully compressed, the 26-inch line could be efficiently operated to accommodate 450,000 Mcfd. Based upon Northern's proven reserves as of July 1966, the time of the filing of its Hamon application (CP67-10), it is now obligated to take approximately 340,000 Mcfd.[5] If allowance is made for the 25 percent swing provided for in Northern's contracts, Northern would have required a line sufficient to transport 425,000 Mcfd as of July 1966. A 26-inch line would be adequate to handle this load; however, it is not adequate if Northern's estimate of probable reserves is added to the proven reserves.[6] Furthermore, Northern's application in CP67–260 filed March 10, 1967, shows that it plans to transport 476,000 Mcfd through the proposed line during the 1967–1968 heating season. Therefore, in view of our prior experience with development of reserves in the Permian Basin, and the fact that Northern's most recent showing of reserves is now nine months' old, we believe Northern should be required to file up-to-date data establishing the adequacy of the 26-inch line to transport the proven reserves from the Delaware Basin or, alternatively, file an amendment to its application in this docket for an appropriately sized line.

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[4] Oil and Gas Journal, June 13, 1966.

[5] This obligation arises out of Northern's contracts which obligate it to take daily quantities at the ratio of 1 to 8,000 of proven reserves. The daily contract obligation automatically increases as the estimate of proven reserves increases.

As already indicated, we have rejected the suggestion that a joint pipeline would be a feasible alternative to the separate lines being certificated here. If it is ultimately determined that it would be more desirable for Northern to construct a line larger than its proposed 26-inch line, any joint pipeline would also have to be larger than the 34-inch line on which the joint line studies are based. A larger diameter joint pipeline would make the joint proposal even less attractive. The unit cost of operation decreases as the diameter of a pipeline increases. However, the incremental decreases are much smaller for the larger sizes of pipe. Thus the difference in unit cost for example between a 30-inch and a 36-inch line is less than half the difference between a 26-inch and a 34-inch line. This lessening in the incremental unit cost would make a larger joint line more undesirable than the 34-inch line which we have rejected.

## EVIDENTIARY MATTERS

Transwestern objects to the Examiner's exclusion of evidence on the potential of the Panhandle area. The evidence, as various parties argued, did not appear to be proper rebuttal. Apart from this, there is nothing to show the extent of Transwestern's interest in the Panhandle gas and we take notice that a greater part of the Panhandle reserves are owned by companies other than Transwestern, so that the reserves may not be available in any case for the proposed exchange.

Transwestern also objects to the Examiner's overruling its objections to certain evidence on transmission cost submitted by Natural's witness. While there may be infirmities in the evidence, we agree with the Examiner that these relate to the weight of the evidence rather than its admissibility. At any rate our determination here is not dependent on the computations of cost comparisons found in the record.

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[6] Inclusion of the probable reserves would increase Northern's daily contract obligations to 473,390 Mcfd and its daily contract maximum to 591,737 Mcfd.

### ALLEGED ERROR ON FINANCING

Transwestern contends that the Examiner and the staff have misinterpreted its evidence on financing in that they concluded that a proposed 5 1/2 percent $25 million issue of debentures would be in addition to a presently outstanding $40 million issue of 5 percent debentures so that the percentage of debt in Transwestern's capitalization would become unduly high. While the evidence is somewhat confusing on the point, Transwestern appears to be correct that the new issue of debentures would be used to retire the older issue.

### ORAL ARGUMENT

In view of the full presentation of the issues involved in these proceedings in the briefs before the Examiner, exceptions and answers to exceptions, oral argument is not necessary and would further delay the completion of these proceedings.

*The Commission further finds*:

(1) The applicants, Northern Natural Gas Company, Natural Gas Pipeline Company of America, and Transwestern Pipeline Company are engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale, subject to the jurisdiction of the Federal Power Commission, and each of them is a "natural-gas company" as defined in the Natural Gas Act.

(2) All of the transportation of natural gas authorized herein will be made in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission.

(3) Northern Natural Gas Company is able and willing properly to do the acts and to perform the service proposed in its applications under Docket Nos. CP65-1, CP65-91, and CP65-338, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities proposed by Northern Natural Gas Company in said applications are required by the public convenience and necessity and a certificate therefor as hereinafter ordered and conditioned should be issued.

(5) Natural Gas Pipeline Company of America is able and willing to do the acts and to perform the service proposed in its application under Docket No. CP65-169 to the extent that they are included in Phase II of this proceeding, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the facilities proposed by Natural Gas Pipeline Company of America in its application under

Docket No. CP65-169, to the extent that they are included in Phase II of this proceeding, are required by the public convenience and necessity and a certificate therefor as hereinafter ordered and conditioned should be issued.

(7) Public convenience and necessity require that the certificates issued herein and the rights granted thereunder be granted without prejudice to the determination in any future proceeding before the Federal Power Commission in which Natural Gas Pipeline Company of America or Northern Natural Gas Company is a party of what portion of their total system facilities, respectively, should be included in their rate bases.

(8) The applications of Transwestern Pipeline Company under Docket Nos. CP65-208, CP65-236, and CP65-237, should be denied because the service and the operation and construction of facilities which it proposes in said applications are not, and will not be required by the present or future public convenience and necessity.

*The Commission orders:*

(A) Transwestern Pipeline Company's applications under Docket Nos. CP65-208, CP65-236, and CP65-237 are denied.

(B) A certificate of public convenience and necessity is issued to Northern Natural Gas Company authorizing it to construct and operate pipeline facilities from a point of connection with Northern Natural Gas Company's existing compressor station in Beaver County, Oklahoma, to the Coyanosa Field and the Gomez Field in southwest Texas, as described in Northern Natural Gas Company's applications under Docket Nos. CP65-1, CP65-91 and CP65-338, for the transportation of natural gas in interstate commerce upon the terms and conditions of this order.

(C) Within 20 days Northern shall file with the Commission data showing that its proven reserves in the Delaware Basin for which it has contracted as of the date of this certificate (whether or not the sale has been certificated by the Commission) are such that they can be handled by a 26-inch pipeline. If its proven reserves are of such a volume to require a larger-sized line, the 26-inch line shall not be constructed and Northern shall file an amendment in this docket for an appropriate sized line. The filings made pursuant to this subparagraph shall be served upon all parties and no construction shall commence until further order of the Commission.

(D) A certificate of public convenience and necessity is issued to Natural Gas Pipeline Company of America authorizing it to construct and operate pipeline facilities from a point of connection with Natural Gas Pipeline Company of America's existing Amarillo line in Moore County, Texas, to Natural's line connecting to the Dagger Draw and the Indian Basin in southeastern New Mexico, as described in Natural Gas Pipeline Company of America's application under Docket No. CP65-169, for the transportation of natural gas in interstate commerce upon the terms and conditions of this order.

(E) The certificates granted herein and the exercise of any right thereunder are conditioned upon compliance by Natural Gas Pipeline Company of America and Northern Natural Gas Company, respectively, with all applicable Regulations of the Commission under the Natural Gas Act and particularly Section 157.20 of those Regulations.

(F) Each applicant to whom a certificate is issued herein shall report promptly in writing and under oath the dates of commencement and completion of construction of facilities authorized herein and the date of commencement of service through such facilities. Such reports shall be filed with the Commission within 15 days after the completion of construction authorized herein.

(G) A certificate issued herein shall be void unless the applicant to whom the certificate is issued accepts it in writing filed with the Commission within 10 days after the date of issuance of this order.

(H) The decision of the Presiding Examiner is adopted as the decision of the Commission to the extent not inconsistent herewith.

(I) Exceptions not granted herein are denied.

(J) Oral argument is denied.

Commissioner Ross *dissenting.*

Ross, *Commissioner*, *dissenting:*

There comes a time when it is no longer advantageous to the public to permit individual parties to use or condemn land without consideration of more economic and socially desirable alternatives. For the electric industry, the *Scenic Hudson* case,[1] with its emphasis on transmission line routing and alternative sources of power, marked the timeliness of a complete approach, including all reasonable alternatives, in considering the licensing of projects in the public interest.

The same approach is now equally applicable to the gas pipeline industry, particularly in the certificate area. Gas pipelines must have rights-of-way and must expend considerable amounts of capital to get the gas to their ultimate consumers. Rights-of-way can mean disruption of a landowner's use of property, and thoughtless expansion of expensive pipelines can lead to higher prices for ultimate consumers who eventually bear the cost in the pipeline's rate base. One alternative to eliminating duplication of rights-of-way and pipelines in the gas industry is the construction of joint pipelines.

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[1] *Scenic Hudson Preservation Conference, et al. v. F.P.C., and Consolidated Edison Co. of N.Y., Inc.*, 354 F. 2d 608 (CA2-1965).

The advantages are clear: less social disruption and costs because only one right-of-way and one pipeline are involved. There is the added advantage that the technology of the industry is such that larger diameter pipelines usually result in economies of scale that are reflected in lower unit costs to the ultimate buyer.

Both Northern and Natural, in the present proceedings, apparently considered the possibility of a joint or combined pipeline.[2] Both have approximately the same sources—reserves in the Permian Basin; both had to transport that gas approximately 300 miles northward to the same destination—the Panhandle area, where each presently has transmission lines practically overlapping each other's. However, both parties filed for separate pipelines, traversing parallel routes, sixty miles apart, to their transmission lines in the Panhandle.

At the request of an intervenor, the Minneapolis distribution companies, Northern produced its working papers for a 30-inch and a 34-inch joint pipeline, and these were presented in the record. The papers indicated potential, sizeable savings in capital and operating costs. A joint line of 30 inches, serving each company with 300,000 Mcfd had capital costs of $55.4 million, of which $27 1/2 million was allocated to Northern.[3] A joint, 34-inch line with a capacity of 600,000 Mcfd would total approximately $61 million, of which Northern was allocated approximately $30.4 million.[4] With added capital costs to provide 450,000 Mcfd level for each party (total: 900,000 Mcfd), the maximum projection by either party in this case, Northern showed a total cost of $73.9 million for a 34-inch joint line, of which $37.8 million was allocated to Northern.[5]

A separate, 26-inch line for Northern to deliver 450,000 Mcfd would cost $44.2 million. Operating costs were similarly estimated to be lower for a joint or combined line with savings to Northern alone of $880,000 annually at the 450,000 Mcfd level. The total costs of Natural's proposed facilities, designed to serve 450,000 Mcfd with compression, is $35.1 million. Thus, the total costs for the two separate lines to deliver 900,000 Mcfd would be approximately $79.3 million. Contrasted with the $73.9 million for a 34-inch joint line to deliver an equal amount, the two separate lines would add approximately $5 million more to the rate base of Natural and Northern.

It is little wonder that the intervenors representing municipalities and distribution companies wished to pursue the alternative of a joint pipeline in the hearings. However, when counsel for the City of Chicago attempted to compare the cost differentials between Northern's proposal for a separate line and the joint line in the working papers, Northern's counsel stated:

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[2] In this case, a joint line is a line owned jointly by Northern and Natural. A combined line is a line that would be owned and operated by Northern, who would transport gas for Natural.

[3] Exhibit 135, p. 4.

[4] *Id.*, p. 10.

[5] *Ibid.*

> * * * frankly, I don't believe any of these studies (Exhibits 135-138) have been explored to the point where they really and truly can be said to be on a comparable basis in every respect * * *[6]

Northern's own policy witness also described the working papers as strictly preliminary studies. As stated by the witness, "We didn't even go to the point of figuring what Natural's costs would be. We abandoned it prior to that point."[7]

Moreover, when Chicago's counsel attempted to elicit further information on the joint pipeline from the sole witness familiar with the only exhibits pertaining to a joint line, the Examiner sustained Northern's objections to Chicago's line of questioning and told Chicago's counsel that there was "no need to cross-examine this witness on something he is not sponsoring."[8]

There is little indication in the record that the interveners could have elicited variations on the joint pipeline proposal from the companies themselves. This is reflected by the following statements of Northern's counsel:

> We have presented the studies; we have duplicated our working papers and it seems to me if somebody wants to put affirmative evidence on from that point, it is up to them and *not* to Northern. (Emphasis added)[9]

The City of Chicago and the Suburban Rate Authority then sought assistance from the Commission Staff by directing a motion to order an independent study by Staff on the joint pipeline issue. When the Examiner inquired as to the feasibility of such a study by Staff, he was informed by Staff counsel that Staff was "unable to provide the type of study * * * requested." The reasons given were the unavailability of Staff due to "other current assignments of high priority" and "of greater importance, the Staff has never had, nor has now, the resources available to it to perform this assignment."[10]

In response, Chicago's counsel stated:

> There is no evidence pertaining to Natural's study, and I think one was made—I am not too sure of it, but the City feels that the Staff acts as a referee in these proceedings, more or less taking an independent and unbiased position, with an eye towards the public interest, convenience and necessity. That

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[6] Transcript, p. 1754.
[7] *Ibid.*, p. 1748.
[8] *Ibid.*, p. 1756.
[9] Transcript, p. 1760.
[10] *Ibid.*, p. 3645.

> is why the motion was directed at the Staff. We feel that since the pipeline was abandoned by both companies, we feel that any evidence submitted by them might tend to be weighted in favor of their now pending applications, rather than to the feasibility and economic convenience of such a joint study. That is why I renew the motion for the reasons mentioned on Wednesday and I won't be repetitious, sir.[11]

Chicago's motion was then denied; it has been renewed by Chicago in its briefs to the Examiner and to the Commission on exceptions to the Examiner's decision.

Thus, it can be seen that a perfectly possible alternative was left high and dry. No record was made from which the joint proposal could be resuscitated full-blown at a later time if the Commission decided it to be in the public interest.

The majority expresses concern whether Northern's 26-inch line is any longer adequate in view of the increase in Northern's reserves in the Delaware Basin and its contract requirements. Northern estimated that it would utilize a fully-compressed 26-inch line in its fourth year of operation, or for 1969–1970. Here we are at the beginning of 1967, however, and Northern's present contract provisions would call for a contract maximum of 590,000 Mcfd.

Rather than remanding the case to take account of the obvious, significant changed circumstances, the majority grants certificates to both Natural and Northern to construct pipeline facilities, finding public convenience and necessity served, as required by the statute. *But*, the majority requires Northern to tell the Commission within 20 days whether a 26-inch line is still appropriate. Moreover, the majority, in essence, says: "Don't worry, Northern, you've got a certificate for a line (or the notion of some line); just assure us that you won't build a line that's too small because that would disprove our original finding that your line, as proposed, was in the public interest."

It is clear to me that these maneuvers are designed to sidestep further consideration by the Staff or the Commission of the record on the joint pipeline issue in light of the new reserves situation. By characterizing Northern's probable showing as an amendment rather than a new application, the majority places the City of Chicago in an impossible situation. First, the City must wait 20 days to find out what Northern will file; then, in the remaining 10 days left, it must assess Northern's statement, plan its strategy in view of any new evidence, decide whether to petition for rehearing, and if granted, to write briefs to meet the new evidence.[12] At the same time, it must juggle consideration as to the certification of Natural, *i.e.*, whether to contest the Commission's decision with regard to Natural in court if the Commission rejects a petition for rehearing on the issue. Meanwhile, back at the Commission, the only matter left before the Commission is Northern's application, or amended application. Will Chicago have standing to contest the amended application? After all, its bird has flown the coop. Even if the City had the resources and stamina to play this procedural game with the Commission, the burdens the majority decision places on this intervener and on subsequent courts is too much. Anyone familiar with this record knows that the Northern, Natural and the joint pipeline proposals cannot be separated; they are of one fabric and must be so considered. There is no justification on the record for the flat statement made by the majority that "a larger diameter joint pipeline would make the joint proposal even less attractive." The comparison of economic gains from a separate 26-inch line and a separate 24-inch line to possible gains from a 36-inch line were simply not discussed anywhere. How such an unknown quantum as the 36-inch line can become "more undesirable" than an already-shadowy 34-inch line proposal is simply beyond substantiation by the majority on the basis of the record in this case.

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[11] *Ibid.*, p. 3646.

[12] There is a statutory requirement of 30 days in which a party must file for rehearing.

In addition to the "procedural" obstacles the majority would throw in the way of the City, the majority cannot escape the fact that this record is without a presentation of a possible alternative joint line study by Natural, without an independent analysis by Staff showing total benefits to all parties and without a truly comparable study of a joint line in the words of the party sponsoring the sole exhibits on a joint pipeline. In addition, the fact that we have 4-year projections by the companies of their takes and markets in the record that have proved decidedly inaccurate within a 2-year period leads me to question the certainty with which the majority seems able to find Northern's project in the best public interest. I, for one, do not feel the record so complete on the joint pipeline issue that I can reject further consideration and certificate two projects, one of uncertain dimensions, that may well moot the issue for all intents and purposes.

In the *Scenic Hudson* case, the court reminded the Commission that "the right of the public must receive *active* and *affirmative* protection *at the hands of the Commission.*" (emphasis added)[13] Part of that active and affirmative protection includes a full record. As noted by Northern in Docket Nos. CP66–212, CP66–215 (*Great Lakes* case):

> The strained efforts of Great Lakes, *et al.* to find technical distinctions between the cited cases (*Michigan Consolidated Gas*

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[13] *Scenic Hudson, supra.*, p. 620.

*Co.* v. *F.P.C.; City of Pittsburgh* v. *F.P.C.*, and *Scenic Hudson Preservation Conference* v. *F.P.C.*) and the instant situation reflect a misunderstanding of the broad scope and nature of the Commission's responsibility and duty in both certificate and licensing proceedings. The cases clearly hold that in both types of proceedings the Commission is charged with the primary responsibility and duty to protect the public interest and that its vision is not to be limited to the horizons of the private parties to the proceedings. In all three cases, Commission orders granting certificates and licenses were set aside by the Courts and remanded to the Commission for its failure to give consideration to the alternative plans presented to it even after the hearing record was closed.[14]

Furthermore, Northern stated that "only the Federal Power Commission car decide and it *must* have before it a *complete record* containing all available information in order to render an appeal proof decision." (Emphasis added)[15] In a footnote, Northern added that "an aggrieved party could * * * claim error on the part of the Commission for its failure to consider evidence regarding the Staff's 'Public Interest Project'" which was introduced by Staff for the first time in its brief in that case.

Northern pointed out that Staff's Public Interest Project was a "possible" and "available" alternative similar to that proposed in *Scenic Hudson*, despite the fact that there was no record evidence to support the project.[16] Had the Examiner in *Great Lakes* refused to reopen the record for additional evidence on Staff's project, Northern stated that the Examiner could only dismiss the competing applications or the Commission would have to remand the case to explore and evaluate properly the Staff's project. In view of the delays that would arise, Northern requested that the record be reopened. I couldn't agree more with just such an approach in this case, in view of the similar circumstances of both cases. For these reasons, my dissent is directed at future interveners who will be forced, if the Staff is not required by the Commission to implement the *Scenic Hudson* standard, to present full cases on alternatives before the Commission.

*Transwestern's Proposed Exchange*

There have been indications that Transwestern no longer stands willing to provide service to Natural as proposed in this consolidated hearing. However, Transwestern has not filed anything to notify the Commission of any change in intentions, which I presume would have been done. Therefore, I am assuming for purposes of answering the majority's decision, that Transwestern's position in the record has not changed.

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[14] See Answer of Northern, *et al.*, to Appeal of Great Lakes Transmission Co. * * * from Ruling of Presiding Examiner, in Docket Nos. CP66–110, CP66–212, *et al.*, at p. 8.

[15] *Ibid.*, at p. 9.

[16] *Id.*

I cannot agree with the majority's rationale in rejecting Transwestern's exchange proposal with Natural. Transwestern's proposal would deliver 140,000 Mcfd from its Panhandle reserves to Natural's transmission system in the Panhandle. In exchange, Natural would deliver 140,000 Mcfd from its Permian reserves into that part of Transwestern's transmission line which extends from the Permian Basin westward. The amounts above 140,000 Mcfd required by Natural would be flowed mainly through Transwestern's existing Panhandle lateral northwards from Natural's Permian reserves to its transmission line in the Panhandle.

Transwestern's line in the Permian Basin to the Panhandle area is already built. Under normal operation conditions, it carries 140,000 Mcfd over a line that can carry 370,000 Mcfd optimum with compression. Under an "interim" arrangement, approved by the Commission in 34 FPC 507, the line is carrying 10,000 Mcfd in a westward direction. The balance is being made up by an exchange agreement whereby Natural's Permian gas is flowing to Transwestern's Western markets and Transwestern's Panhandle reserves are being delivered to Natural's main transmission system in the Panhandle area, which is closer to Natural's market.

If Natural's pipeline is approved, this will create a cross-haul situation with two separate pipelines of approximately 250 miles in length, one bearing gas from north to south for Southwestern customers; the other bearing gas from south to north for Midwestern customers of Natural. On the other hand, an exchange arrangement along the lines proposed by Transwestern would continue the exchange described above for 140,000 Mcfd and utilize Transwestern's existing line to carry Natural's gas from its Permian reserves to the Panhandle.

There is some question as to the scheduled takes by Natural from its Permian reserves; the City of Chicago questioned the even more basic issue of whether Natural needed the Permian reserves at all. The Staff estimated that it would be 8–10 years before Natural would reach the 450,000 Mcfd volumes for which it is designing its pipeline. The unutilized capacity on Natural's line will have to be borne by Natural's customers in its rate base. The sums involved are considerable. Transwestern's project facilities would cost $3.4 million and Natural's facilities $20.6 million. The estimates for facilities at every level of service including the 450,000 Mcfd level, show that Transwestern's facilities would be cheaper than Natural's. At the

450,000 Mcfd level, there is a difference of $17.7 million.[17] As for levels beyond 450,000 Mcfd, the Transwestern arrangement is capable of a maximum 510,000 Mcfd (140,000 Mcfd from Panhandle exchange and 370,000 Mcfd from Natural's Permian reserves over Transwestern's lateral), or enough to take care of Natural's supply requirements from the Permian Basin for some time.[18]

In view of the sizeable differences in cost between Transwestern's and Natural's proposals, it is extraordinary to me that the majority finds it unnecessary to make any cost determinations because of "other grounds." One such ground is the uncertainty of Transwestern's ability to deliver 140,000 Mcfd from its Panhandle reserves. In order to support the statement of its policy witness that Transwestern would be able to deliver 140,000 Mcfd from its Panhandle reserves, Transwestern attempted to introduce additional evidence as to the availability of new reserves in the Panhandle region. Its proffer of evidence was denied by the Examiner. It is well-known to this Commission that development is continuing in the Panhandle and nearby Anadarko regions. Presumably, Transwestern will be in as good a position to acquire these new reserves as any other pipeline. Certainly, the majority gave this much credit to Natural's management when certificating a separate pipeline for Natural in the Permian Basin which would have an ultimate capacity of 450,000 Mcfd although the present showing of availability of reserves to Natural relates only to the 158,000 Mcfd initially proposed by Natural.

Surely, the weight of the evidence that Transwestern will not be able to maintain the 140,000 Mcfd level—with the absence from the record of Transwestern's proffer to show new development in the Panhandle—is not overwhelming. Indeed, the fact that Transwestern is seeking to sell gas from the Panhandle indicates some excess of gas over needs, rather than a deficit position, as the majority indicates. If the supply issue is believed to be critical, an exchange agreement could have been conditioned on a "best-efforts" condition on Transwestern's part.

Other reasons given by the majority for preferring the Natural proposal to Transwestern's include the "hazards" of future, possible rate increases by Transwestern and the "severe competitive disadvantage" that Transwestern's proposal would impose on Natural. Thus, it seems that the majority would require a guaranty by Transwestern of stable rates to Natural over some given length of time. Since there is no reason to suspect that Transwestern's costs will increase any more than any other pipeline's, it would appear that the majority's concern is aimed at the allegedly volatile nature of Transwestern's incremental rates. If this is the case, however, there is little reason for the majority's apprehensions for Transwestern's facilities are, for the most part, built; their costs are known. The costs of the additional facilities that will be built as Natural's load increases are in the record and were fully allocated to Natural in the rates proposed by Transwestern. Moreover, had the majority applied the Staff's computation of rates rather than Transwestern's—which rolled in the costs of the entire eastern portion of the Transwestern system utilized by Transwestern to serve Natural—the costs for the Transwestern service would have been lower than those rates proposed by Transwestern. In sum, it is hard to discern what the majority views as such a danger *** could it be inability to regulate just and reasonable rates for Transwestern?

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[17] *Transwestern Pipeline Co.*, Brief on Exceptions, at p. 22.

[18] Natural estimated that its annual pipeline capacity growth was expected to be 135,000 Mcfd—185,000 Mcfd over the next three years.

As for the "severe competitive disadvantage" that would befall Natural, the majority is hard pressed to describe how that would occur. The majority concedes that it must "assume that Transwestern would use its best efforts in behalf of Natural," but somehow its duties to its present customers, Cities Service and Pacific Lighting, will preclude Transwestern from performing satisfactorily toward Natural. It has never been my understanding that subsequent customers of a pipeline receive a lesser priority of service than previous customers, yet that is presumably what the majority believes to be the case. Moreover, the Transwestern gas in the Panhandle area is limited to 140,000 Mcfd for Natural; additional supplies have always been assumed by Transwestern to be forthcoming from Natural's reserves in the Permian Basin. If the majority is attempting to say that Natural would have difficulty in causing Transwestern to loop or add compression on its Panhandle lateral, I find this argument of little merit. Any reluctance on Transwestern's part could have been mitigated by a condition that Natural had the right, subject to Commission approval, to increased volumes carried by the Panhandle lateral by constructing the facilities itself. This very same condition exists in a contract between El Paso and Northern for the transportation by El Paso of Northern's gas from the Permian Basin.

The majority does not lack positive reasons in favor of Natural's separate proposal, however. It cites the freedom of Natural to avoid cooperating with its competitor and to enter aggressively into contracts with producers. Where cooperation makes such good sense, as in this case—with evident savings to customers of both Transwestern and Natural—I find the majority's enthusiasm in this matter puzzling. First, it is well-known to the majority that lack of access to the Permian Basin has not halted Natural and Northern from entering into contract with producers there.

As to the second reason, is "flexibility" or the freedom not to coordinate even if there are considerable savings to the consumers to prevail above everything? After all, the majority did not even find it necessary to make cost comparisons in this case between Transwestern and Natural's proposals to estimate monetary savings to the consumers. It was simply enough that Natural didn't want to coordinate its facilities with Transwestern.

The fact of the matter is, Natural has to file with the Commission for any additional increments since its present application calls only for a certificate to deliver 158,000 Mcf.[19] There is no more of a regulatory burden to Natural if Transwestern were also a party to a proceeding to deliver more gas to Natural, from Natural's own reserves. In the words of one intervener, "*** the regulatory process is not an impediment to effective functioning by Natural under Transwestern's proposal. Regulation is a fact of life with which both Transwestern and Natural have been successfully conducting their businesses."[20]

To their credit, the majority seems to recognize the validity of the preceding intervener's argument by their sole statement that "this (certification of Natural) would not preclude Natural and Transwestern sometime in the future from entering into an exchange agreement." In view of Staff counsel's statement that Natural is not expected to fill its line for 8–10 years and the other prolific areas from which Natural may draw to supply its market other than the Delaware Basin, the majority's single statement is of little comfort. In the interim, all the advantages that could have flowed from utilization of Transwestern's excess capacity will have been irretrievably lost to the consumer.

There is another alternative which the majority did not discuss in its opinion. Staff counsel during the hearings inquired into the possibility of a sale by Transwestern of its Panhandle lateral to Natural and received a negative response from the Transwestern witness. In my opinion, a Transwestern proposal conditioned to permit additional looping or compression by Natural in the event that Transwestern would refuse to provide for additional deliveries of Natural's gas from the Permian and possibly a condition to require best efforts or at least no discrimination among Transwestern's customers in the Panhandle would probably provide a satisfactory arrangement for Natural to get its reserves out of the Permian Basin economically and still provide adequate safeguards. On the other hand, had I shared some of the doubts of the majority as to the ability of Natural and Transwestern to maintain a satisfactory transportation agreement as proposed herein, I believe the sale to Natural of Transwestern's Panhandle lateral would have been preferable to certification of a separate pipeline for Natural. The lateral would most likely have been used solely for purposes of transporting Natural's gas anyway and its use as proposed by Transwestern would have eliminated the need to construct another new pipeline where an existing one would suffice.

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[19] Any loophole provided by the Commission's budget-type authorizations to a party was not intended by me to be a favorable aspect for that party in a competitive hearing, contrary to the majority's opinion.

[20] Brief on Exceptions for the People of the State of California and the Public Utilities Commission of the State of California, p. 9.

### *Rates*

Various rates reflecting different cost allocations were presented by the parties as reflected in the following schedule:

[In cents]

| Level of service at 66⅔ percent L.F. | Natural | Transwestern | Staff (to reflect rolled-in costs) | |
|---|---|---|---|---|
| | | | 6¾ percent | 6¼ percent |
| 158,000 Mcfd | 7.84 | 4.46 | 4.01 | |
| 225,000 Mcfd | 6.46 | 4.12 | | |
| 300,000 Mcfd | 5.26 | 3.59 | | |
| 375,000 Mcfd | 4.98 | 3.56 | | |
| 450,000 Mcfd | 4.82 | 3.60 | 4.70 | 4.57 |

The difference in rates at the initial level of service could mean over half a million dollars annually to Natural's customers. In addition, the California customers of Transwestern will probably receive a lower rate from fuller utilization of Transwestern's lines and consequently lower overall costs because a lower border price for gas will mean lower intrastate California gas prices. Yet the majority chose only to "refer * * * to some of the cost comparisons made on the record in order to delineate the contentions of the parties," because of the overwhelming weight of the "other grounds" discussed previously.

Before I can accept the majority's conclusion that the pipelines can individually pursue their ways despite the sizeable potential savings to the consumers in this case, I feel a thorough examination of the various rates presented is a necessity.

Transwestern's rate combines the incremental cost and sharing-of-the-benefits principles. Presumably, the application of these principles is novel in the gas industry; it is not so novel in the electric industry. The intent of Transwestern's rates is to increase utilization of existing facilities. If this can be accomplished without occasioning injury to any of the parties, the validity of its use seems evident. Here, Transwestern has an exchange situation which, if approved, will literally free an existing pipeline, the Panhandle lateral, for another use. The present customers of Transwestern are paying the fixed costs of the lateral now; any contribution to these costs by procuring a new user will lower the costs for the present customers. Transwestern fixed this "contribution" at half the difference between Natural's incremental costs and Transwestern's incremental costs. The rate proposed by Transwestern incorporated the cost of adding new facilities to the existing facilities plus the contribution. The end result is that Natural gets volumes of gas equivalent to that proposed by its separate line at lower costs and the California consumers of Transwestern may get a rate reduction as a result of the added revenues.

It is important to note that the California interests, in their Brief of Exceptions, objected to the Examiner's statement that California had some "misgivings" about Transwestern's project. The California interests stated that "California supports Transwestern's proposal in Docket No. CP65-237 without misgivings because it believes that proposal to be in the public interest * * * California simply pointed out to the Examiner, on brief, that it seeks to achieve a reduction in Transwestern's rates to its existing California customers to reflect the benefits to be derived from the exchange. These benefits must sooner or later be realized by the ultimate consumers of natural gas in California, whose protection is the primary aim of the Natural Gas Act." [21]

The major objections to Transwestern's method of computing rates come from the Staff and Natural. Staff used the rolled-in cost method, which takes the cost of all Transwestern's facilities east of Roswell and allocates the cost among the parties on an Mcf-mile basis. The resulting rate is even lower than the proposed Transwestern rates and considerably lower than Natural's rates. Natural's rates are based on building its separate facilities and it objects to Transwestern's rates as unstable. However, under either the Staff or Transwestern's method, the rates are considerably lower than Natural's and it is difficult to see how either method would lead to higher rates than those proposed by Natural. Therefore, I cannot reject Transwestern's proposal, as the majority can, when its certification would, under any foreseeable outcome of the rate case which would follow certification, lead to lower rates for Natural's customers than the project being certificated today.[22]

Finally, I would object to the inference in the majority's opinion that incremental rates should be rejected simply because they, like every other rate, are subject to change in the future. The 1967 Annual Report of the Council of Economic Advisers, in its section on regulatory policy, states:

> The broad issues are often the same as for the nonregulated sectors. Regulation like other Government policies, must not be diverted to protecting the established positions of particular

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[21] California, Brief on Exceptions, p. 10.

[22] California requested a rate case if Transwestern's application were granted.

> firms or industries at the expense of economic efficiency. Nor must excessive reliance on *uniform prices* preclude the use of price differences to achieve the best use of capital intensive technologies. [Emphasis added] [23]

Transwestern has presented a rate schedule that appears to have considerable merit and appears reasonable in view of the facts of this case, *e.g.*, the schedule of takes by Natural; the avoidance of cross-hauling; the benefits to the California consumers. Although final resolution of all the issues is to be left to a rate case, enough was said in the record to warrant more affirmative consideration of Transwestern's proposal by the majority.

## INITIAL DECISION

## OF THE PRESIDING EXAMINER GRANTING AND DENYING CERTIFICATES UNDER SECTION 7(C) OF THE NATURAL GAS ACT

(Issued June 22, 1966)

LANDE, *Presiding Examiner:* We are now concerned only with the issues and matters presented for consideration and decision in Phase II of this proceeding. This concerns the proposals of Northern Natural Gas Company (Northern) and Natural Gas Pipeline Company of America (Natural) to construct and operate facilities to connect large supplies of contracted gas reserves in the Delaware Basin to their respective pipeline systems and the alternative proposals of Transwestern Pipeline Company (Transwestern) to transport certain volumes of gas for Northern and/or Natural by means of Transwestern's existing and certain proposed facilities. Northern and Natural oppose Transwestern's application, preferring to construct their own facilities and transport their own gas. All three applicants are natural gas companies as defined in the Act. Northern's and Natural's applications on the one hand and Transwestern's on the other are mutually exclusive.

This consolidated proceeding is to determine, among other things, the more desirable manner of meeting the long-term needs for natural gas in the vast northeastern section of the midwest area served by Northern and Natural. The central issue is which of the applicants better meets the requirements of Section 7 of the Natural Gas Act. In other words, does "the present or future public convenience and necessity" require certification of Northern's and Natural's or of Transwestern's proposal?

The record shows, and it is undisputed, that Northern's and Natural's projects present no serious problems as to design, location, financing, gas reserves, storage facilities, cost, markets and economic feasibility. The hotly disputed matters relate to Transwestern's application to render the proposed service to either Northern or Natural or to both of them. Northern and Natural consider Transwestern's proposal detrimental to their own interest and to that of their customers. The cost of service under the alternative proposals is one of the prime factors to be considered in deciding whether the public convenience and necessity require that Northern's and Natural's gas be transported from the Permian Basin to the Texas Panhandle through pipeline facilities constructed, owned and operated by Northern and Natural or through Transwestern's facilities. Differences between costs of service presentations reflect in part differences in investment in facilities to render the service. Cost-of-service computations and witnesses were presented by Transwestern, Natural, Northern, and the Commission's staff. Each of the applicants and the staff used methods of computing costs embracing different cost allocations, different assumptions, and different classifications of facilities and cost and, consequently, reached different results. These different approaches will be discussed herein and the selection of applicants will be made on the basis of the preponderance of cost evidence coupled with the broader considerations of public convenience and necessity.

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[23] 1967 Annual Report of the Council of Economic Advisers, p. 117.

### *History of the Proceeding*

By Commission orders issued March 16 and May 12, 1965, various certificate applications were consolidated for hearing and decision under the above dockets. The hearings were held in two phases. Phase I dealt with a conventional system expansion of Natural in Docket No. CP65-169 and an interim exchange arrangement between Natural and Transwestern in Docket Nos. CP65-320 and CP65-325. The Presiding Examiner's decision in Phase I granting certificates as requested was issued on August 3, 1965, and the Commission's order adopting the Examiner's decision was issued on August 13, 1965, 34 FPC 507.

This Initial Decision is concerned only with the issues and matters presented for consideration and decision in Phase II of this proceeding. The record in Phase II shows that Northern actively seeks to procure new gas supplies and attach them to its system for transportation to its markets. It has contracted with producers in the Coyanosa and Gomez Fields of the Delaware Basin, Texas, for some 2.6 trillion cubic feet of gas reserves and is continuing to negotiate for additional reserves. After having contracted for a substantial quantity of the Coyanosa gas in the spring of 1964, Northern filed an application in Docket No. CP65-1 for a certificate authorizing the construction and operation of some 42 miles of 24-inch pipeline to transport this Coyanosa gas to its existing Permian Basin facilities at Kermit, Texas. Presently Northern's Permian Basin facilities are not directly connected to its main system. Its gas is brought to its main system by way of an exchange and transportation arrangement with the El Paso Natural Gas Company. During the summer of 1964, Northern contracted for additional reserves in the Coyanosa Field and, on October 6, 1964, filed an application in Docket No. CP65-91 for authorization to construct and operate some 365 miles of 26-inch pipeline and related facilities which would connect its present Permian Basin facilities (and those applied for in Docket No. CP65-1) with its main transmission system at Beaver, Oklahoma. In this application Northern stated that it was also negotiating with Humble Oil & Refining Company for large additional reserves in the Gomez Field which is 12 miles south of the Coyanosa Field. A contract for these reserves was executed on November 4, 1964. The purpose of this new line is to provide means of attaching and utilizing Northern's reserves in the Delaware Basin and also to provide a direct connecting link between Northern's present extensive Permian supply facilities and its main pipeline system.[1] The line was designed to have an optimum capacity of 450,000 Mcf per day.

On April 23, 1965, an application was filed by Northern in Docket No. CP65-338. By this application Northern seeks authorization to construct and operate some 12 miles of 24-inch pipeline to connect its Gomez Field reserves with the line proposed in Docket No. CP65-1.

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[1] The Permian Basin is a geographic term applied to the general producing region of West Texas and Southeastern New Mexico. The Delaware Basin is a geologic province within the larger Permian Basin area.

Meanwhile, Natural had contracted for reserves in another area of the Permian Basin north and west of Northern's gas and, on December 11, 1964, filed an application in Docket No. CP65-169 for authorization to increase its sales and expand its system. Included in this application were the pipeline facilities required to transport its new Permian Basin supplies to its existing system.

On November 27, 1964, Transwestern filed a Petition to Intervene in Docket Nos. CP65-1 and CP65-91 stating that its pipeline, designed to flow gas in a generally westerly direction, was operating at substantially less than optimum capacity and that it would file applications seeking authorization to expand its supply laterals and provide Northern with a service which would eliminate the need for the construction and operation of the south to north facilities proposed by Northern. On January 11, 1965, Transwestern filed its application in Docket No. CP65-208, a proposed alternative to Northern's application in Docket No. CP65-1. On February 9, 1965, Transwestern filed its applications in Docket Nos. CP65-236 and CP65-237 proposing alternatives to Northern's application in Docket No. CP65-91 and Natural's application in Docket No. CP65-169, insofar as it concerned new Permian Basin facilities. Transwestern proposes to take delivery of such volumes of gas at points on its existing West Texas lateral and to redeliver equivalent volumes to Natural and Northern in the Panhandle area by transportation and exchange. Under its proposals here, Transwestern's Panhandle gas reserves will be delivered to Natural and/or Northern in the Panhandle area. Transwestern's service to California will be maintained by exchange volumes delivered to Transwestern in the Permian area. The flow of Transwestern's Panhandle lateral will be reversed in order to transport whatever additional volumes are required for the redelivery of equivalent volumes.

The hearing on Phase II commenced on October 5, 1965, and continued intermittently for nineteen days of hearing. There were 33 interveners besides the applicants. Final briefs were filed on May 4, 1966.

### *The Controversy*

Northern and Natural wish to expand their facilities for transporting natural gas from the Permian Basin to their customers in the Midwest. Ordinarily they would have had little difficulty in obtaining the necessary certificates. They readily meet the certification requirements of the Natural Gas Act. They presented proper evidence about their technical, economical and financial qualifications. However, Transwestern has submitted to the Commission a counterproposal suggesting that Northern and Natural utilize the unused capacity of its pipeline which was originally designed to serve the need of Southern California customers. Transwestern proposes rates which under a cursory examination should appeal to Northern and even more so to Natural. As will be discussed later, Transwestern's charges are attractive during the first year or two of service, circuity notwithstanding.[2] Subsequently, the cost of providing additional facilities to meet the anticipated growth in demand of gas changes the picture. When the Mcf daily requirement increases, Transwestern's proposal may or may not remain attractive to Northern and Natural. Had the parties been able to reach a mutual understanding, it is quite likely that such an agreement would have been approved by the Commission. However, both Northern and Natural refuse to accept Transwestern's offer. They claim that the rates proposed by Transwestern are "inducement rates" for the initial period of operations which are not likely to remain in force for any appreciable length of time. They contend that Transwestern's rates are subject to increase under pressure from the California customers and also as the outcome of surveillance of regulatory authority. Furthermore, Northern and Natural would rather not enter into binding obligations with Transwestern, their competitor for gas in the Permian Basin area.

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[2] The transportation distance from Coyanosa to Beaver via Northern's facilities is only 406 miles as compared to a distance of 533 miles via Transwestern's facilities.

Transwestern demonstrated during the hearing that its offer was a sincere one. This company is obviously anxious to make greater utilization of its facilities and would undoubtedly make a best effort to stand by the proposed "inducement" rates. Northern's and Natural's argument that the transportation proposal is not acceptable because of competitive reasons is not convincing. Although competition is an important consideration it does not appear to be controlling when the use of some other company's facilities results in a significant saving. Thus so far Northern has been successful in obtaining substantial Permian Basin gas without having its own pipeline connecting its Permian facilities to its main line transmission facilities in Oklahoma. The record shows that companies similarly situated have done business before whenever it was worth their while. Here, Northern and Natural evidently do not think that it is worth their while. As will be detailed later, their numerous customers intervened in this hearing and strenuously opposed Transwestern's proposal.

We shall first discuss Northern's and Natural's proposals and then deal with Transwestern's counterproposal as well as the positions of the various interveners herein.

### *Northern's Proposal*

In Docket No. CP65-1, Northern seeks authorization to construct a 42-mile 24-inch line from the Coyanosa Field to a point on its present Permian Basin system at Kermit, Texas, where it will connect with the new 26-inch line proposed in Docket No. CP65-91 as well as with Northern's present Permian Basin facilities. The total cost of the Coyanosa to Kermit facilities is estimated to be $3,392,600 including interests and overheads. These facilities have been constructed under a temporary certificate issued September 24, 1965. The facilities for which authorization is sought in Docket No. CP65-338 consist of 12.1 miles of 24-inch line and appurtenant facilities which will connect the Gomez Field to the Coyanosa to Kermit Line. The cost thereof is estimated at $1,015,600 including interest and overheads.

In its application in Docket No. CP65-91, Northern proposes to construct and operate 364.9 miles of 26-inch pipeline running from Kermit, Texas, to Northern's existing main line station at Beaver, Oklahoma. In the first year of operation one 4000 horsepower compressor station will be required to handle the peak day flows of 225,000 Mcf. The total cost of the pipeline and compressor as applied for in this application is $33,013,500.

The total cost of facilities for which authorization is sought herein by Northern is $37,422,700. The adequacy of the proposed facilities and the reasonableness of such costs are not disputed.

Northern's Witness Peirce testified about the total incremental cost of service per Mcf for the first four years of operation of the new supply system. He said that while the first year cost of service is 7.34 cents per Mcf transported, by the fourth year, when the optimum efficiency of the 26-inch line is realized, the total incremental transportation cost of service per Mcf, for an average haul of well over four hundred miles, is 4.5 cents.

In addition to the incremental cost of service for the new supply facilities, Northern presented a systemwide cost of service for the first three years of operation which showed that, including the facilities proposed herein and those that will be required to transport the full 450,000 Mcf per day as projected, its systemwide rate of return will be 6.20 percent in 1966, 6.28 percent in 1967 and 6.36 percent in 1968.

Northern estimates that by the end of 1974 its saleable contract demand capacity based upon the requirements of its existing customers alone will exceed two and one-half million Mcf per day. Further, the full potential market that will be available to Northern in 1974 is nearly three and one-half million Mcf per day. Northern will allegedly require transportation capacity of 225,000 Mcf per day to carry its Delaware Basin gas to its main line at Beaver, Oklahoma, in the year 1966; by the fourth year of operation, 1969, it will require the expanded capacity of 450,000 Mcf per day.

Northern produced copies of its contracts held in the Coyanosa and Gomez areas of the Delaware Basin, Pecos County, Texas. Net acres under contract to Northern in the Coyanosa Field total 9,006; net acres contracted in Gomez Field total 7,287. The contracts provide for a price of 16 cents per Mcf with one-cent escalation every five years to a maximum price of 20 cents per Mcf. Each contract has a term of 25 years and provides for the delivery of high pressure (1000 psig) pipeline quality gas at the outlet of a treating plant.[3]

After a build-up period, Northern's basic obligation in both fields is to take the residue gas volumes remaining from production of one Mcf for each eight thousand Mcf of recoverable reserves. Estimates of the gas reserves in the Coyanosa and Gomez Fields were presented by Witness Miller. The total estimated dedicated proved and probable reserves of pipeline quality gas in both fields are 2 trillion, 601 billion, 299 million cubic feet as of December 31, 1964. Of this total volume, the reserves attributable to Gomez Field are 1 trillion, 226 billion, 527 million cubic feet. The reserves attributable to Coyanosa are 1 trillion, 374 billion, 772 million cubic feet of gas. Mr. Miller testified that all of the reserves that he attributed to Coyanosa could now be considered proved and that of the probable reserves attributable to the Gomez Field more than one-half will be proved within eighteen months and that all will be available within three years. Northern submits that it needs the Delaware Basin reserves presently under contract. Northern's Witness Brady prepared a ten-year input summary using Northern's minimum take obligation for each source of supply as established by contract or by state regulation. Mr. Brady concluded that, on a minimum take basis, the total of the input by sources meets the system input requirements until the year 1970, at which time deficiencies will occur and that without Delaware Basin supplies, Northern would need to search and contract for an equal amount of reserves in some other area.

Witness Plourde described Northern's plan for financing and described its outstanding securities. The gist of his testimony is that funds for the proposed facilities and for other construction projects will be obtained from the sale of $20,000,000 of sinking fund debentures and from internal sources such as reserve accruals, retained earnings and cash-on-hand. He was of the opinion that the cost of the facilities can be financed as proposed. No party desired to cross-examine Mr. Plourde, and nobody contested Northern's ability to finance its facilities.

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[3] Northern submits that the prices and quality provisions are in conformity with the prices and related quality limits set in Opinion No. 468, *Area Rate Proceeding, et al.*, Docket No. AR61-1, *et al.*, 34 FPC 159, issued August 5, 1965.

The record shows that the Coyanosa and Gomez Fields constitute major gas supply acquisitions in an area which promises an excellent potential for large future gas supplies. In 1953, Northern's subsidiary, Permian Basin Pipeline Company, began to purchase gas from producers in the Permian Basin and to transport and sell 300,000 Mcf per day of such gas to Northern.[4] Gas purchased and transported by Permian was delivered to Northern at Plains in Yoakum County, Texas, 200 miles south of the southern terminus of Northern's pipeline system at Dumas in Moore County, Texas. In lieu of Northern building a line from Plains to Dumas, Northern entered an exchange arrangement with El Paso Natural Gas Company for the delivery of equivalent volumes of gas to Northern at Dumas because El Paso had a 24-inch line extending from Plains in Yoakum County, Texas, to Dumas, in Moore County, Texas, where a connection with Northern's main line could be made. In addition, El Paso controlled reserves located at or near the Dumas end of this line which in the absence of this exchange would have been transported south to Plains by El Paso. Under the terms of the Northern-El Paso agreement, Permian delivered the 300,000 Mcf per day to El Paso at the Plains Station and El Paso redelivered equal volumes to Northern at Dumas.

In addition to the El Paso exchange volumes of up to 575,000 Mcf, Northern alleges that it will have available from the Delaware Basin by 1970, an additional 450,000 Mcf per day. Thus, of an estimated 1969 system saleable capacity of 2,314,142, over a million Mcf per day or more than 44 percent of inputs for sales will be from the Permian Basin as compared to approximately 30 percent at the present time and 27 percent in 1953.

In view of Northern's increasing dependence upon the Permian Basin as a source of new gas supplies, Northern asks for maximum efficiency and flexibility in the integration of those supplies into its extensive pipeline system. Northern declares that it can properly and effectively integrate its Permian supplies with its other supplies only if it is allowed to construct its own pipeline which would be interconnected with its existing Permian facilities.

The record shows that Northern did consider the economics of reasonable alternative methods of having its future Permian Basin supplies transported to its main line at Beaver including enlarging the exchange with El Paso and a new exchange with Transwestern.[5] Northern concluded that the proposed 26-inch line from Kermit to Beaver would be more economical than any of the alternatives and would put Northern in a more advantageous position to contract for future gas supplies. The opponents failed to prove defects in said conclusion.

Northern presented proper evidence about its technical, economical and financial qualifications. All told, Northern fully met the certification requirements of the Natural Gas Act. But for Transwestern's proposal, discussed later, it is necessary to find that it is in the public interest to approve Northern's certificate applications herein.

### *Natural's Proposal*

Natural proposes to construct 230 miles of 24-inch pipeline and 26.2 miles of 20-inch pipeline from the existing terminus of its Amarillo Line at compressor station 112 in Moore County, Texas, to a point in Lea County, New Mexico, where connection will be made with the 43.8 miles of 20-inch pipeline extending northeasterly from the Indian Basin and Dagger Draw Fields of the Permian Basin constructed under authorization issued in Phase I of these proceedings. Other facilities include 5.93 miles of 30-inch loop line on the Amarillo Line immediately north of station 112, 3.5 miles of 8-inch lateral pipeline perpendicular to the proposed 24-inch line in Roosevelt County, New Mexico, to receive gas from the Bluitt Field, and miscellaneous, appurtenant facilities. The total estimated cost of these facilities is $20,618,000. The Permian Basin line is designed to transport approximately 450,000 Mcf per day after the addition of compression and will have an initial, unpowered capacity of 168,000 Mcf per day. The Permian Basin extension will provide a direct link between Natural and its markets and the vast gas reserve potential of the Permian Basin region of southeastern New Mexico and West Texas.

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[4] *Permian Basin Pipeline Company,* 12 FPC 85, 95 (1953). Permian was later merged into Northern. See 24 FPC 1208 (1960).

[5] Exhibits Nos. 135–138 are studies of the alternatives considered other than Transwestern which was considered separately.

Witness Poole testified that the increasing needs of Natural's customers will require Natural to expand peak day pipeline capacity in the order of 135,000 Mcf to 185,000 Mcf each year for at least the next three years. Mr. Poole emphasized that this projection represents minimum growth and does not include additional sales in the large St. Louis market or any sales to new market areas or customers. Mr. Poole testified that gas requirements of Natural's markets would increase by 58 billion cubic feet from 1966 to 1968, and that a similar rate of growth would continue for at least three to four years beyond 1968. Natural's system wide rates of return on its net investment in utility plant, gas production advances and gas stored underground noncurrent, for the last full year preceding installation of the proposed facilities, and the first three years after, were estimated by Mr. Poole as follows: 1965–6.43 percent; 1966—6.83 percent; 1967—6.54 percent; 1968—6.53 percent.

Natural's ability to finance, construct and operate the services proposed herein was not in dispute. Witness Burns testified that Natural has carried on a vigorous program to secure for its markets any reserves developed in the existing Amarillo Line supply area within economic reach of the line. The Panhandle area, still the principal source of Amarillo Line supplies, also serves as a primary fount of supply for such commercial and industrial centers of the midwest and midcontinent area, as Detroit, Milwaukee, Omaha, Minneapolis, and Denver, and it also provides large volumes of gas for intrastate markets. Mr. Burns testified that ten other major pipeline companies compete with Natural for any new reserves developed in the existing Amarillo Line supply area and, in addition, there are strong intrastate purchasers, such as Oklahoma Natural Gas Company, Pioneer Natural Gas Company and industrial users. Mr. Burns testified that the Amarillo Line has many sources of gas that, although adequately backed by reserves, are past their prime in deliverability. For example, Natural's own leases in the Texas Panhandle, which have been providing gas for over 30 years, and other such sources, have been declining in peak day availability. Natural has concerned itself with this problem for several years and has been working diligently to restore this flexibility.

The need of the Amarillo Line to tap a new source of large-volume, long-term reserves is unchallenged. It is also not disputed that the Amarillo Line supply problems, if allowed to continue unchecked, will have serious consequences. Most serious of all, Mr. Burns testified, is the fact that someday, Natural would be unable to adequately supply its markets. Such a failure of supply would do inestimable damage. "It would have disastrous effects not only for Natural, its customers, and their millions of gas consumers, but also for the untold number of persons in Natural's market area whose jobs or investments depend upon an adequate supply of natural gas." The 24-inch, 26-inch and 36-inch pipelines comprising the Amarillo Line represent the largest portion of the several hundred million dollars which Natural has invested in pipelines.

Natural submitted evidence that it decided upon an extension to the Permian Basin after a lengthy study had demonstrated that of all the possible supply areas to which the Amarillo Line might have been extended, the Permian Basin stands out above all the others when viewed from the standpoint of the gas reserves that have been and are being developed. Natural's opinion regarding the vast reserve potential of the Permian Basin was confirmed by DeGolyer & McNaughton, a firm of consulting petroleum engineers, which advised Natural that the Permian Basin is one of the two most promising regions for discovery and development of new, large volumes of high deliverability of gas in the United States. Mr. John H. Murrell presented extensive testimony and exhibit material demonstrating the tremendous reserve and high deliverability potential of the Permian Basin area.

Setting forth the company's plans for reserve acquisitions in the Permian Basin, Mr. Burns testified that Natural intended to acquire large volumes of new long-term reserves in the Permian Basin within the next four to five years. He testified further that Natural intended to vigorously pursue acquisition of reserves in the Permian Basin area, as it has done in the past in its existing areas of supply, adding annual increments of approximately 75,000 Mcf per day until the maximum capacity of the line is reached. Mr. Burns testified further that he intended to draw upon Permian Basin supply sources to greatly ameliorate the Amarillo Line flexibility problems. "By scheduling continuous takes from Permian Basin reserves at or near maximum contract rates during the winter heating season, and by correspondingly reducing Permian Basin takes to minimum contract volumes during the offpeak season, Natural will be able to attain a very substantial amount of needed flexibility in its pipeline operation, particularly as the Permian Line approaches the 450,000 Mcf peak day level."

Mr. R. W. Lindgren described Natural's planning that went into the design of the Permian Basin Line. These studies considered several alternatives, with various size lines, to determine comparative initial and ultimate cost and initial and ultimate capacity. These studies led to selection of the facilities proposed by Natural in this application, which have been designed to carry approximately 450,000 Mcf per day after the addition of compression, with an initial capacity of 168,000 Mcf per day to transport the initial volumes of gas available to Natural under its present contracts with producers in the Permian Basin. Mr. Lindgren testified further that as the proposed 24-inch line is expanded to handle additional supplies, the economies of volume will become operative and the overall unit cost of service on the line will continue to decrease until the economic limit or ultimate capacity of at least 450,000 Mcf per day is reached. "In sum, the proposed Permian Basin Line provides ready, economical expansibility to transport the large volumes of new long-term reserves which Natural will contract for in the Permian Basin over the next four to five years."

The Commission staff feels that Natural's presentation is unduly hopeful. Staff Counsel submit that Mr. Burns was probably overly optimistic in his prediction as to the rapidity with which the use of the Permian line would be built up to its optimum peak capacity of 450,000 Mcf per day, and did not give sufficient weight to the manner in which Natural intends to use Permian gas to satisfy Natural's market need. Staff Counsel say that his later testimony implies a much more gradual build-up of the load on the Permian line than was expressed in his earlier testimony that a peak day figure of 450,000 Mcf of gas would be reached on the Permian line within the next three to five years.

Staff Counsel submit that their conclusions regarding the low load factor on the Permian line most of the year and how long it will take to reach the line's optimum capacity do not question Natural's ultimate need for Permian gas. They do indicate, however, the need to protect gas consumers by conditioning any certificate that may be issued to Natural in this proceeding to provide that the certificate is granted without prejudice to the determination in any future proceeding before the FPC in which Natural is a party of what portion of Natural's facilities shall be included in its rate base.

In conclusion, Natural presented proper evidence about its technical, economical and financial qualifications. Natural fully met the certification requirements of the Natural Gas Act. Unless this finding is negated by Transwestern's counterproposal discussed below, it appears in the public convenience and necessity to approve Natural's applications herein.

### *Transwestern's Counterproposal*

Transwestern's proposals encompass three separate projects:

a. To serve the requirements of Natural by the delivery to Natural of equivalent volumes of gas purchased by Natural in the Indian Basin, Dagger Draw and Bluitt areas of New Mexico;

b. To serve the requirements of Northern by the delivery to Northern of equivalent volumes of gas purchased by Northern in the Coyanosa and Gomez Fields in Pecos County, Texas; and

c. A separate project to serve the combined requirements of both Natural and Northern.

The facilities which Transwestern is required to install to perform the exchange service herein proposed are affected by the outcome of the decision in *Transwestern Pipeline Company, et al.*, Docket No. CP63–204, *et al.* This proceeding is pending before the Commission on exceptions to a Presiding Examiner's decision. Transwestern has made its instant presentation showing the required facilities and related cost both on the assumption that its applications in CP63–204, *et al.* will be granted, and also on the assumption that they will be denied, and the additional exchange facilities added to Transwestern's present system. Transwestern's cost estimates are, therefore, presented in several alternatives.

Transwestern proposes to take delivery of up to 158,000 Mcf of gas per day from Natural at a point of intersection with Natural's Indian Basin facilities and Transwestern's 24-inch West Texas lateral; this is approximately 54.8 miles southeast of Roswell and into its 8-inch Bluitt lateral. Transwestern will redeliver equivalent volumes to Natural at a point on its main Amarillo line 26 miles downstream from the terminal point of its proposed Permian line. Transwestern's proposed rate to Natural is: (a) A monthly charge of $68,000; and (b) An additional charge of 3 cents per Mcf for the first 100,000 Mcf per day exchanged on an annual basis and one cent per Mcf for volumes exchanged annually in excess of that amount.

Transwestern submits that at an approximately 66⅔ percent load factor, Natural's cost under Transwestern's project would be 5.02 cents per Mcf. Natural's corresponding cost through its proposed facilities would allegedly be 7.84 cents per Mcf. At the full 158,000 Mcf per day delivery level Natural's cost under Transwestern's project would be 3.68 cents per Mcf while its cost through its own facilities would allegedly be 5.23 cents per Mcf. The estimated cost for the proposed additional facilities, assuming approval of its applications in CP63-204, *et al.*, is $3,431,000. Transwestern's estimated cost for facilities assuming denial of its pending applications is $6,022,000.

Transwestern proposes to take delivery of up to 225,000 Mcf of gas per day from Northern at the point of intersection of Northern's proposed Gomez and Coyanosa facilities and Transwestern's 24-inch West Texas lateral; Transwestern will redeliver equivalent volumes to Northern at its Beaver Compressor Station in Beaver County, Oklahoma. Transwestern's proposed rates to Northern is as follows: (a) a monthly charge of $260,000, and (b) an additional charge of 1.5 cents per Mcf for the first 150,000 Mcf per day exchanged on an annual basis and one cent per Mcf for volumes exchanged annually in excess of that amount. The estimated cost for the proposed additional facilities, assuming approval of Transwestern's applications in CP63-204, *et al.*, is $17,787,000. Transwestern's estimated cost for the required facilities assuming denial of such applications is $21,171,000. Transwestern contends that at the assumed 450,000 Mcf per day level, Transwestern's facility cost would be approximately $34,226,000.

The service proposed by Transwestern under the combined Natural and Northern projects is about the same as proposed in the individual projects. The facilities required to serve both Natural and Northern are somewhat different, however, from the facilities required to serve these companies on an individual basis. The total cost of these facilities, depending upon the certification of Transwestern's projects in CP63-204, *et al.*, is estimated from $27,160,000 to $30,669,000.

It was submitted that during January 1966, Transwestern experienced deliveries from Panhandle reserves on a simultaneous basis of 330,000 Mcf per day. On a nonsimultaneous basis deliveries from this area have been as high as 600,000 Mcf per day.

Transwestern also submitted cost estimates covering the facilities required to render the proposed exchange service on the assumption that there was "no gas available" for exchange in the Panhandle. Under these circumstances, as under the exchange assumption, the entire capacity of Transwestern's existing 24-inch Panhandle lateral would be available for deliveries from Permian reserve sources.

Transwestern's financing plans cover the construction proposed in CP63-204, *et al.*, for increased service to Pacific, as well as construction to provide the proposed service up to 158,000 Mcf per day to Natural and up to 225,000 Mcf per day to Northern.

Transwestern proposes to finance the service for Northern and Natural by issuing first mortgage bonds up to $20,000,000 and 5½ percent debentures. Transwestern's Witness Koros said that the bonds could be sold at an interest rate of 5¼ percent. He stated that Transwestern has no firm commitment with respect to any portion of its financing, but that he has discussed the financing plans shown in its exhibits with Metropolitan Life Insurance Company, which holds approximately 97 percent of Transwestern's outstanding 5¼ percent mortgage bonds, and the insurance company indicated an interest in purchasing all or a portion of the first mortgage bonds which Transwestern would issue to finance the projects. The 5½ percent subordinated debentures, due in 1979, which Transwestern proposes to issue in amounts up to $25 million, will be in addition to $40 million of 5 percent subordinated debentures, due in 1969, presently outstanding.

The Commission staff points out that if the financing shown in Transwestern's exhibits should be consummated, debt securities would comprise 77 percent of its total capitalization. The Commission has said that the amount of debt securities should not be greater than 75 percent of total capitalization.[6] Accordingly, Staff Counsel recommend that if a certificate is issued authorizing Transwestern to render service to either Natural or Northern, that it be conditioned to require Transwestern to refrain from paying any dividends on its common stock until the amount of its debt securities is reduced and maintained at not over 75 percent of its total capitalization. Transwestern submits that its projects are economically feasible, because the incremental revenues allegedly exceed incremental costs.[7]

### *The Midwestern Interveners*

Central Illinois Electric and Gas Company, City of Chicago, Illinois Power Company, Iowa-Illinois Gas and Electric Company, Iowa Public Service Company, Iowa Southern Utilities Company, Minnesota Natural Gas Company, Northern Illinois Gas Company, Northern Indiana Public Service Company, Suburban Rate Authority, Peoples Gas Light and Coke Company, North Shore Gas Company, and Wisconsin Southern Gas Company, Inc., have filed briefs in which they submit that Transwestern's proposed service would isolate their supplier pipelines from gas supply and would delay the expansions upon which they as customers depend to serve their markets. They allege that Transwestern's proffered services are not really less expensive: that they are, instead, "a proposal which would rob the Midwest to pay California." Finally, several of those customers have argued that even if Transwestern's service were somewhat less expensive, that would not outweigh other competitive and red tape disadvantages inherent in Transwestern's proposal.

Northern Illinois Gas Company, the largest customer of Natural, supports the position taken by Natural and emphasizes the importance to it and its approximately 915,000 customers that Natural have direct access to the natural gas reserves of the Permian Basin, thereby avoiding the dangers which Northern Illinois sees in the permanent exchange agreement proposed by Transwestern.

Northern Illinois alleges that the ability of Natural to continue to make a prompt and flexible response to its needs depends on Natural obtaining direct access to the reserves of the Permian Basin. The contest lies over the adequacy of Transwestern's proposal to fulfill the purposes of Natural's application. Northern Illinois claims that Transwestern's proposal would seriously abridge the advantages which Northern Illinois would enjoy if Natural were to gain its desired direct access to the Permian Basin. The particular interests of the California gas consumers in this proceeding is prompted by a temporary excess capacity in Transwestern's Panhandle System. Northern Illinois thinks that Transwestern's excess capacity will be absorbed in the next few years by the growing demands of the California market. Therefore, the interests of the California gas consumers here are at best short-term interests. The interests of the Midwestern consumers, on the contrary, are long-term interests because of the importance to them of gaining direct access to a new source of gas reserves in the Permian Basin. Northern Illinois argues that the long-term needs of the Midwestern consumers outweigh in this case the temporary or short-term benefits which the California consumers would allegedly receive if Transwestern's proposal is adopted.

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[6] *Houston Texas Gas and Oil Corporation* and *Coastal Transmission Corporation*, 16 FPC 118, 140.

[7] *Northern Natural Gas Company* (Opinion No. 463, issued June 2, 1965) Docket No. CP64-255 (Phase II) 33 FPC 1163; *Northern Natural Gas Company, et al.* (Opinion No. 404, 1963) 30 FPC 859; *Kansas-Nebraska Natural Gas Company, Inc., et al.* (Opinion No. 389, 1963) 29 FPC 1058.

Illinois Power Company, another large customer of Natural and Northern, argues that approval of Transwestern's application would involve customers of Natural and Northern in all of Transwestern's rate cases. "Illinois Power already participates in rate proceedings of its five pipeline suppliers. It does not want to become embroiled in another series."

Illinois Power says that the record in this case shows: when a rolled-in cost method of allocation is employed, Transwestern's rate to Natural is at least as much as, and probably exceeds, Natural's own cost of produced gas. All the expert witnesses (except Transwestern's) allegedly agreed—whatever else they may have disputed—that Transwestern's rate would have to equal or exceed Natural's cost of production.

Iowa-Illinois Gas and Electric Company also has serious reservations as to the method of determination of the "initial rate" proposed by Transwestern. Since the "initial rate" proposed by Transwestern is not a firm rate, and was determined on a basis not currently supported by this Commission, it appears certain that before a firm rate could be determined, a complete rate case would have to be heard. "The lengthy proceedings required by such a hearing would impose unnecessary hardship on Iowa-Illinois it being unable to determine with certainty the final costs to them and the ultimate customers."

Peoples Gas Light and Coke Company and North Shore Gas Company argue that they are unable to discern any benefit in having Transwestern, a Southern California oriented pipeline and a competitor for gas reserves, stand between their pipeline supplier and its Permian Basin sources of supply.

Transwestern's proposal allegedly stems from a temporary condition on its system resulting from the failure of the Southern California market to develop as rapidly as expected. It is apparent that as the California load does in fact develop, as it undoubtedly soon will, Transwestern will conclude, either on its own volition or at the urging of the California interests, that it can no longer cooperate in efforts to move Permian Basin gas to Midwestern markets. "Transwestern could not be compelled to construct facilities or to divert existing capacity to Peoples and North Shore's needs."[8] Construction of Natural's own line at that point may not be capable of accomplishment in time to permit Peoples and North Shore to satisfy their customers' demands for more gas. In any event, Peoples and North Shore argue that the public interest requires that they or their Illinois customers not be subjected to such extensive control by Transwestern and other parties whose economic interests lie in other regions of the country.

The Suburban Rate Authority suggests that if the problems with the Panhandle lateral are so serious that Transwestern and its existing customers are willing to accept less than the full cost that would be allocated to the service of transporting Permian Basin gas through this line, it should have conditioned its proposed service so that neither Northern nor Natural would ever have to pay such fully allocated costs.

The Suburban Rate Authority says that it would not oppose Transwestern's proposed service from a cost standpoint if there were positive assurance that Northern's cost would always be less than the other alternatives now available to it. "If Transwestern is convinced of its need to improve the utilization of its system, it should be able to suggest a satisfactory solution to the problem of giving such assurance. Other than fixed price contracts, there is no precedent for such a rate guarantee, and the administrative problems in determining the costs that otherwise would have been incurred are numerous and complex."

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[8] *Granite City Steel Co.* v. *F.P.C.*, 320 F. 2d 711 (CADC–1963).

Until there is some positive protection against higher costs to Northern, The Suburban Rate Authority is opposed to the use of Transwestern's facilities for the transportation of Northern's Permian Basin gas.

### *The Jointly-Owned Pipeline Proposal*

The City of Chicago questions the large expenditure of funds which would be required to construct these separate pipeline facilities. It argues that there is no imminent need to introduce Permian gas into Natural's system at this time, when it has reserves readily available in areas where facilities already exist. If, however, it is decided that there is a need for this gas in the systems of Natural and Northern, the City contends that there is no justification for separate parallel facilities in the same geographical area. To certify separate pipeline facilities, would result in unwarranted duplication of service and economic hardship on the consumers. The City of Chicago argues that the two proposed pipelines would parallel each other, traversing the same general geographic area, and would only be sixty miles apart. Due to the geographic proximity and same general direction of the proposed structures, a single large diameter pipeline would allegedly eliminate duplication of service and of costs.

The brief of The Suburban Rate Authority also favored a jointly-owned pipeline. However, neither the City of Chicago nor The Suburban Rate Authority submitted any evidence in support of their proposal.

Similarly, the Commission staff was unable to supply evidentiary support for a jointly-owned pipeline:

> MR. KNIGHT: Mr. Examiner, in response to the Examiner's request of January 19, transcript page 3300, I have been advised by the Staff that it is unable to provide the type of study that has been requested. Although the Staff has several employees that are qualified to perform this type of work, they simply are not available because of other current assignments of high priority. But of greater importance, the Staff has never had, nor has now, the resources available to it to perform this assignment. I am referring here to automatic data processing and other computer equipment in common use by the industry in its pipeline design procedures. * * * (Tr. 3645)

Both Natural and Northern claim that they have thoroughly exhausted all possible alternatives, and that each management has decided on the separate pipeline allegedly to be in the best interest of the company and the consumer.

During the proceeding, Mr. R. D. Grimm, Northern's policy witness, testified that management had considered "other alternatives." One of these alternatives which had been investigated was that, in lieu of separate facilities, Natural and Northern could construct and operate a joint-pipeline. This proposal was the subject of several cost studies made by Northern's staff and testified to by Mr. R. L. LoChiano. The alternative pipeline was to consist of a 26-inch leg from Kermit, to a point near the eastern edge of Lea County, New Mexico. At that point, it was an equal distance from the Indian Basin facilities of Natural and Northern's facilities. Here the system combines and the larger joint-line was to run northward an equal distance between both Natural and Northern's proposed pipelines, terminating at a point equidistant from Northern's Beaver Station and Natural's Station 112.

The cost studies prepared by Northern, were admitted into evidence and marked "Exhibits 135 through 138"; these Exhibits were comparative cost studies between Natural's proposed pipeline and Northern's proposed pipeline and a jointly-owned line at various flows ranging from 300,000 Mcf per day to 900,000 Mcf per day. The gas volume in the jointly-owned pipeline in the projected studies was to be equally apportioned so that in the first year flow of 300,000 Mcf per day, Northern would account for 150,000 Mcf per day and Natural would account for 150,000 Mcf per day.

With regard to alternative lines considered by Natural, Mr. Lindgren, testified that "a number of studies were made to determine the feasibility of constructing a new line into the Permian Basin area. These studies were large in number and differed with respect to timing, line size, point of origin, point of termination and therefore length." He described in detail the various studies which Natural had made and the results of these studies, and was cross-examined on the studies at length.

Natural's work papers on a joint line were also produced and given to the City of Chicago and the other parties. Additionally, Mr. Lindgren was prepared to answer questions regarding the work papers. However, when he appeared for cross-examination in the answering phase, neither the City of Chicago nor any other party took that opportunity to question him on the joint line.

Northern's jointly-owned pipeline studies are in the record and indicate that the lowest cost per Mcf "joint" or "combined" system (basically a combined 34-inch line which would have been owned by Northern and which would have been located approximately equidistant between Natural's and Northern's reserves) when put on a comparable basis with Northern's proposed 26-inch line—same pressures, same temperatures and projected load factors—would apparently cost Northern at least one-tenth cent per Mcf more than its individual proposed system.

Northern convincingly submits that should Natural's flows on a peak day basis not keep up with Northern's *or* should Natural's load factor be less than 67 percent, as projected, Northern's costs would be increased substantially. These considerations are important when it is kept in mind that the staff doubts both Natural's ability to build-up its takes and its ability to maintain its projected 67 percent load factor and the City of Chicago even doubts Natural's need for Permian Basin gas at all.

Minneapolis Gas Company points out that "the existence of a more desirable alternative is one of the factors which enters into a determination of whether a particular proposal would serve the public convenience and necessity," *City of Pittsburgh* v. *Federal Power Commission*, 237 F. 2d 741, 751 (CADC–1956), that the Federal Power Commission "is under a statutory duty to give full consideration to alternative plans," *Scenic Hudson Preservation Conference* v. *Federal Power Commission*, 354 F. 2d 608 (CA2–1965). However, it argues that the statutory duty of "full consideration" has been met by the comparative hearing in this case and the legal requirements of the *City of Pittsburgh* and *Scenic Hudson* cases are satisfied.

Minneapolis Gas Company contends that a critical defect of Transwestern's proposal is that it is not, in fact, an "alternative" to the service contemplated by Northern in Docket No. CP65–91. An "alternative" is defined as "an opportunity for choice between two things, courses or propositions, either of which may be chosen, but not both." Transwestern's proposal, however, does not offer the same service as that contemplated by Northern and does not present an opportunity for choice between two possibilities, "either of which may be chosen." An integral part of Northern's proposal therefore is a gas supply system which initially will transport 225,000 Mcf per day, but which can easily and economically be expanded to 450,000 Mcf per day in the fourth year of operation to meet the future gas requirements of its customers. On the other hand, Transwestern's proposal covers the transportation of 225,000 Mcf per day, but is silent on how it would deliver additional volumes in the future. The additional facilities described in Transwestern's rebuttal evidence by its Witness Wooten were allegedly presented only for cost comparison purposes and, according to Minneapolis Gas, do not purport to represent how Transwestern would expand its facilities to deliver additional volumes to Northern. As to the future expansion of Transwestern's facilities for the delivery of additional volumes to Northern, Transwestern's proposal is an unknown. Therefore, Transwestern's proposal in Docket No. CP65-236 does not contain all of the essential elements contained in Northern's proposal in Docket No. CP65-91 and should be denied. Transwestern's characterization of its project as an "alternative" to Northern's is based upon "a comparison of apples and oranges."

Minnesota Natural Gas Company contends that Northern's proposal better serves the public interest in the long run than the limited exchange service proposed by Transwestern because Northern can supply 450,000 Mcf of gas per day to its system on more advantageous terms than can Transwestern. While Transwestern's initial rate appears to be superficially attractive, it is illusory and will be shortlived. The Natural Gas Act entitles a pipeline to just and reasonable rates. Minnesota Natural Gas contends that the question as to how Northern plans to meet its long-term gas needs is one which lies basically in the discretion of the company's management.[9]

Accordingly, the Examiner finds and concludes that the suggestion of Chicago that this already long proceeding be further delayed while the Commission's staff spends more time on studies which Northern has already made, is not very helpful now. The record shows that the matter of a joint line has been satisfied on its basic points. The possibility of a joint line has been raised and examined and the sound reasons for its rejection have been given on the record and in the briefs. The City of Chicago and The Suburban Rate Authority have had ample opportunity to cross-examine the witnesses of Natural and Northern regarding their decision to reject the joint line as well as the opportunity to present their own witnesses on the matter. In the circumstances, a complete record on the joint line has been made in this proceeding. Thus, the requirements of *Scenic Hudson Preservation Conference* cited by the City of Chicago, have been met, and no further inquiry into this collateral point is warranted.

### *California Interest*

Southern California Gas Company, Southern Counties Gas Company of California and Pacific Lighting and Supply Company (The Pacific Lighting Companies) intervened in these proceedings as the major jurisdictional customer of Transwestern.

During the course of the hearings, the differences between Transwestern and The Pacific Lighting Companies were resolved through negotiation and compromise, resulting in the letter agreement of October 27, 1965. The agreement anticipates that certification of Transwestern's exchange proposals would produce substantial benefits to Transwestern's existing customers and that Transwestern would pass those benefits on to its customers as such benefits accrue. Under these circumstances The Pacific Lighting Companies support Transwestern's proposal herein.

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[9] *Natural Gas Pipeline Company of America*, 16 FPC 80, 83.

The State of California and the Public Utilities Commission of California (California) also filed a brief supporting Transwestern, but expressing misgivings. Their brief points out that Transwestern's cost of service of the facilities necessary to deliver Permian gas is reflected in the rates that have been paid and are being paid by the California consumer. Transwestern's competitive applications, if approved, will require that its facilities formerly used in service to California now be utilized to supply the needs of Northern or Natural or both. The brief contends that as a matter of equity the California consumer should not pay for facilities that have been put to a use totally unrelated to service rendered to him. California argues that the letter agreement does not provide for specific rate relief to California based on excess revenues attributable to the exchange proposals involved in this proceeding, but would provide for rate reductions only if an application for a certificate authorizing additional service to California in a separate and distinct proceeding is granted. California says: "As for rate relief based on excess revenues generated by the exchange, the agreement, at best, merely sets the stage for negotiations between the parties."

Under these circumstances California asserts that the matter of reduction of rates because of increased revenues would best be resolved by means of a formal rate proceeding. California submits that this Commission has stated that it will consider the effect of a certificate for a new sale upon the rates charged to existing customers, and order the seller to reduce or change its rates to such other customers as a condition to the grant of the certificate, where the immediate effect of Commission action certificating a new sale may be to harm existing jurisdictional customers.[10] California contends that the principle developed by the cited cases applies equally to a situation where a new *service* such as that proposed by Transwestern might have an immediate detrimental effect upon existing jurisdictional customers. California concludes that the circumstances in these proceedings require that the Commission, upon certification of Transwestern's exchange proposals, contemporaneously order an investigation of Transwestern's rates pursuant to the provisions of Section 5(a) of the Natural Gas Act.

### *Cost of Transwestern's Proposed Service*

Transwestern's costing method requires detailed discussion. Northern, Natural and the Commission staff each took issue with Transwestern's value of service approach. Each presented expert witnesses who applied conventional cost allocation studies to Transwestern's cost of service, to determine whether it would be more or less than Northern's and Natural's incremental cost of providing their own respective service. As mentioned before, each party used different methods of computing costs embracing different cost allocations, different assumptions, and different classifications of facilities and costs and, therefore, reached somewhat different results. However, all but Transwestern are unanimous in their opinions that in the very near future Transwestern's proposal will prove uneconomical. For a general appraisal of the allocations herein, it will suffice to review the staff's cost of service computation and then to comment on the other main contentions.

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[10] *Colorado Interstate Gas Company,* 33 FPC 281 (1965); *Panhandle Eastern Pipe Line Company,* 30 FPC 1260 (1963).

Staff witness Horton first developed a cost of service for Transwestern's facilities for the proposed service and then determined what portion of the total cost of service was applicable to Northern and to Natural. He used a portion of Transwestern's existing facilities plus the estimated incremental facilities necessary to transport the volumes at different levels for each company. The Mcf-mile method of cost allocation was used, and the volume levels used were (1) delivery of 225,000 Mcf per day to Northern and 158,000 Mcf per day to Natural, and (2) delivery of 450,000 Mcf per day to each.

In describing his methods in determining Transwestern's costs, Mr. Horton said he believed "the entire transmission system east of Transwestern's Compressor Station 9 should be considered." He also eliminated the cost of Station 9 on the basis that it is used solely for transporting gas to California.

Mr. Horton adjusted the depreciation reserve from Northern's exhibit since that exhibit assumed the 900,000 Mcf per day level would not be reached immediately; his adjustment made allowance for the accumulated depreciation reserve for the incremental facilities when the ultimate level of 900,000 Mcf per day for each year prior to the year that level is reached.

Mr. Horton has broken down the proposed Transwestern cost of service between transportation and exchange services; the mileage for the transportation service being the actual miles of haul, and the exchange service being assigned costs equal to average system costs, exclusive of the costs allocated to the transportation service. He said he considered 140,000 Mcf per day as exchange, this being the amount available in the Panhandle area for delivery to Northern and Natural which would not have to be physically transported from point of receipt on the west Texas lateral; and further said, "The cost to be assigned exchange service should not be too low as to give Northern and Natural a free ride. However, it should be less than the cost for the transportation service * * * (and) the amount assigned appears to be a reasonable compromise."

Total transmission cost of service was allocated among all customers served by the jointly used facilities in proportion to the product of the miles of haul and the volumes of gas hauled.

Assuming facilities constructed by Transwestern to carry daily volumes up to 158,000 Mcf for Natural and up to 225,000 Mcf for Northern; and assuming the transportation of Natural's gas at 66⅔ percent load factor; Transwestern's cost of service on behalf of Natural would be 4.66 cents per Mcf computed by the staff's method. This is to be compared with 5.02 cents as derived by the use of Transwestern's rate form. If Natural should construct its own facilities and transport its own gas, its comparable unit cost per Mcf would be 7.84 cents according to Natural's witness Mr. R. W. Chapin.

Assuming the construction by Transwestern of facilities to enable Transwestern to deliver volumes of gas up to 450,000 Mcf per day to Northern and the same amount to Natural, making a total of 900,000 Mcf per day; and further assuming the operation of the facilities for the delivery of gas to Natural at 66⅔ percent load factor; Transwestern's cost of serving Natural would be 4.30 cents per Mcf as computed by the staff's method. Transwestern did not offer in evidence a rate computed under its rate form at the 900,000 Mcf per day level. If Natural should construct its own facilities to transport up to 450,000 Mcf of gas per day, its unit cost at approximately 66⅔ percent load factor would be 4.82 cents per Mcf according to Natural's witness Chapin.

The staff exhibits show allocation of costs and unit costs of service only under combined projects in which it is assumed that Transwestern would perform service for both Natural and Northern. Transwestern's witness E. N.

Howard used the staff's method to compute costs for Natural separately on the assumption that Transwestern would be authorized to perform the service for Natural only. Mr. Howard stated that he followed the method outlined by staff witness Horton, except in place of a 6¼ percent rate of return, Mr. Howard used a 6⅞ percent rate of return.

Mr. Howard testified that at the 158,000 Mcf per day level, operating at 66⅔ percent load factor, the costs allocated to Natural by the staff's method, but using a 6⅞ percent rate of return instead of 6¼ percent, would be 4.01 cents per Mcf. That is 1.01 cents per Mcf lower than Transwestern's proposed initial rate of 5.02 cents per Mcf for service to Natural only as computed by Mr. Ransom's method, and 3.83 cents lower than Natural's 7.84 cents per Mcf cost at this level.

At the 450,000 Mcf per day level, Transwestern's cost of serving Natural alone, using staff's method of cost allocation, would be 4.70 cents per Mcf as compared with Natural's cost of 4.82 cents per Mcf at that level, a difference of 0.12 cent.

Mr. Horton, staff witness, compared Transwestern's proposed rate with staff's unit cost and with the incremental unit cost claimed by Northern and Natural assuming they had constructed their own pipeline, the resulting figures indicating, he said, "that Transwestern can render service for Northern and Natural during the first year cheaper than either pipeline company could perform the service for itself. It indicates that at the 900,000 Mcf per day level Transwestern can render the service for Natural cheaper than Natural could perform the service for itself. However, at the 900,000 Mcf per day level Northern could perform the service for itself cheaper than Transwestern could perform it."

The above shows that on cost per Mcf basis Transwestern's proposal quickly sheds its inducement features.

Transwestern made a better showing with respect to part of its offer, namely, service for Natural alone; however, the fact remains that it fell short even on that part of its proposal. Transwestern alleged that since its proposed rates to Northern and Natural are above incremental costs but below the alternative costs of building new facilities it is consistent with the Commission's decision in *Permian Basin Pipeline Company, et al.* (Opinion No. 249, 1953), 12 FPC 85, 98. However, the rate involved in the cited *Permian Basin* decision was apparently arrived at in a compromise settlement among the participants in that proceeding. No other party voiced any objection to it, and the Commission allowed the rate to stand without any analysis of the nature of the transaction involved or of the basis for the rate. Without the concurrence of all parties concerned, Transwestern simply will not be able to make the "inducement" rates last for any worthwhile period of time.

Transwestern's attempt to derive support from the Advisory Committee Report No. 22 of the Federal Power Commission Power Survey, Part II (1964) does not change the picture either. The Advisory Report has little relationship to the proposal of Transwestern, which, on the one hand, would impair the ability of Natural and Northern to serve their own customers, and, on the other hand, would, by means of the special rate scheme, force the California consumer to pay for facilities that have been permanently devoted to full-time service for other markets. The Report concludes that a rate which recovers just the cost of a given facility is not unjust and reasonable when the consumers of the first utility have, at all times, either direct or indirect benefit of the pooled facilities. In the present case, however, the California consumers would not be benefiting noticeably from some of the facilities for which they would be charged under Transwestern's rates. They would be called upon to continue to bear a portion of the cost of the Panhandle lateral, even though that facility would be dedicated to long-term, full-time service for the consumers served by Natural's and Northern's customers.

Similarly, the cited *Southwestern Public Service Co.*, Opinion No. 451 (March 2, 1965) 33 FPC 343, does not support Transwestern's proposal either. In *Southwestern*, a power company which had agreed to accept a low return on sales to its cooperative customers sought, in "compensation," to include an added element of return in its rates to its investor-owned customers, arguing that under such an approach it would earn a reasonable return on all of its wholesale business, considered as a group. The Commission rejected this "averaging" argument, holding:

> Such an averaging goes beyond what is permissible in rate-making at least in the circumstances of this case. It is one thing to say that Southwestern may voluntarily make rate concessions which are justified in the public interest to one group of its customers, but it is quite another to say that it may do so at the expense of its other customers. It seems to us that each group of wholesale customers has a right to service at just and reasonable rates and that, ordinarily, the others may not be compelled to bear the burden of such rate concessions. (33 FPC 343 at 356)

As stated before, the State of California has already objected to the California consumer bearing the burden of Transwestern's proposed rate, and has requested that the "Commission upon certification of Transwestern's exchange proposals contemporaneously order an investigation of Transwestern's rates pursuant to the provisions of Section 5(a) of the Natural Gas Act."

Transwestern says that the Commission is committed to no single method of developing rates. The only requirement is that the end result make sense. Transwestern takes the position that the Commission should make pragmatic adjustments in the exercise of its regulatory functions as are required and that when the end result is consistent with "reasonable judgment" judicial inquiry is at an end. Transwestern made a *prima facie* case that its proposed rate could be approved by the Commission provided the rate had been acceptable to Northern and Natural, and provided further, that there was no opposition from the prospective customers. The impasse is reached when an attempt is made to demonstrate that Transwestern's proposal has a preponderance of favorable public convenience and necessity aspects, and that therefore it must be approved by the Commission to the exclusion of Northern's and Natural's own proposals and contrary to the desire of most other parties herein. Regrettably, the cost allocation methods proposed by Transwestern do not satisfy the other parties nor the staff of the Commission. There appears little need for an extended discussion on the particular details of all the contradictory cost allocation methods proposed by the various parties. All of them were based on sundry assumptions of facts and future estimates. However, for the sake of completeness the Presiding Examiner did discuss briefly the various costing methods. This was done without necessarily agreeing or taking issue with every theory posed herein. It was brought out here primarily to show the climate of the controversy and to demonstrate that while reasonable parties can have reasonable disagreements about the proper costing methods of service, the weight of the evidence presented herein does not warrant a decision ordering a "shotgun venture" which the parties do not wish to consummate. Moreover, Northern and Natural foresee serious and unwarranted complication in such a "shotgun venture," and there is genuine and unavoidable distrust between the Midwestern customers of Northern and Natural and the California customers of Transwestern.

### *Findings and Conclusions About the Incremental Cost Allocation*

The incremental cost comparisons upon which Transwestern bases its entire case vary substantially, depending upon the assumptions made as to (a) whether Northern or Natural or both would be served, (b) the maximum daily volume of gas to be transported, (c) whether Transwestern's proposed facilities in CP63-204, *et al.*, would be authorized and (d) the adequacy of Transwestern's gas reserves in the Panhandle area. Generally, and before substantial increase in demand, Transwestern's incremental costs appear to be lower than the incremental costs of Northern and Natural, because Transwestern's proposed service utilizes existing facilities on its system. That might be significant if the cost of Transwestern's service were to be based on incremental costs exclusively. However, such is not the case. In a future contested rate determination proceeding the cost to Northern and Natural is more likely to be based on an allocation of Transwestern's total costs to the service.

The applicants and the staff have put into the record their analyses as to how Transwestern's costs is most likely to be allocated to the proposed service by the Commission. The various procedures used produce a wide range of results. The various presentations have been discussed above. It is not necessary to evaluate each of the allocation studies in order to cope with the fundamental problem. The wide divergence of results shows that the cost that eventually will be allocated to the proposed service is extremely uncertain. The only allocation method that produces a significant cost saving to Northern is the "incremental cost—value of service" approach used by Transwestern. Both Northern and Natural argue convincingly that such a method has little chance of being accepted by the Commission. Transwestern's method alone holds out the hope of any significant savings. Transwestern's argument that cost allocation is not an exact science and that no one method can lay claim to being the right method is not persuasive herein, because of well established Commission precedents. In brief, Transwestern has not proven that its proposal will produce a significant and enduring cost saving to Northern, since it could not show that its cost allocation would be acceptable to the Commission. Transwestern no doubt would stand by its proposed rate levels. However, it is apparent from the record that Transwestern's customers are not about to remain submissive for any length of time while Midwestern customers enjoy a gas rate advantage by utilizing facilities originally designed to meet the future need of California.

If Northern were required to pay more for Transwestern's service than would be incurred under its own project, the Midwestern gas consumers would be in effect subsidizing Transwestern's service to southern California. There is no justification for such a finding. Transwestern's problems are not the doing of Northern's or Natural's customers. Clearly, it is not in the public interest to burden Midwestern customers for the sole purpose of giving Transwestern an opportunity to obtain better utilization of its facilities. It is recognized that Transwestern has temporary problems in finding a more efficient use of its Panhandle lateral. Its Panhandle reserves were seriously questioned in these proceedings, and their relatively small size appears to detract from the value of that lateral for moving gas. Because of the circuitous route the gas must take in going to Roswell, the Panhandle lateral cannot, on a full cost basis, compete for transportation of Permian gas to the Panhandle area with a new line following a more direct route.

Staff counsel hopefully suggests that the authorization of Natural's proposal need not preclude the future of use of Transwestern's line for the transportation of Natural's gas. If Natural should reach the 450,000 Mcf per day optimum operation of its Permian line and, thereafter, need additional peak capacity, which could be obtained on its own line only by looping, it might be that the use of Transwestern's facilities would then be more feasible economically than looping Natural's Permian line. A decision on such a matter, of course, would have to be made in the light of conditions existing at the time the need arises. Natural's witness Lindgren pointed out that expanding pipeline capacity by looping is more expensive than increasing capacity by adding compression. Since, according to Natural's witness Burns, Natural intends to swing heavily on its Permian Basin gas supply to meet the wintertime needs of its customers and to reduce takes in the summer to the contract minimums, it is not improbable that after the expansion of Natural's Permian line capacity to its optimum of 450,000 Mcf per day, it would be preferable to supply Natural's winter need for Permian Basin gas by using Transwestern's facilities instead of looping Natural's Permian line.

The Examiner finds that regardless of whether or not conditions in the future would warrant the use of Transwestern's facilities to supplement Natural's Permian line capacity, the decision herein must be made solely on the basis of the evidence presented by the parties.

Having studied and evaluated all the evidence, briefs and arguments presented herein, the Examiner adopts the staff's recommendation to deny Transwestern's proposal in this proceeding.

The proposal by Transwestern to render service to Northern for volumes up to 225,000 Mcf per day will not be adequate for Northern, Northern's evidence shows that it will need facilities capable of transporting 450,000 Mcf per day in the fourth year. Although Transwestern in Article IX of its Pro Forma Rate Schedule offers to construct additional facilities if required to transport volumes greater than 225,000 Mcf per day, nothing definite is proposed with regard to such facilities or the changes for such transportation.

While it appears that Transwestern may be able to transport first year volumes at a lower cost than Northern can transport them, benefits to Northern, as well as to its customers, of Northern owning and operating its own line, even for first year volumes, outweight these cost advantages. The evidence herein readily warrants a finding that Transwestern's application to serve Northern should be denied.

According to the staff's presentation, the evidence indicates that Natural would be using the optimum capacity of its proposed Permian line within ten years. Any cost advantage which Tranwestern would have over Natural would be short-lived, and would probably vanish long before 450,000 Mcf per day pipeline capacity would be reached. Tranwestern bases its case on an apparent cost advantage at *initial* 158,000 Mcf per day and *initial* 225,000 Mcf per day levels. It offered no assurance of long-run cost advantage. In its proposed Rate Schedule X-7 Transwestern provides, in Article X, that it "shall have the *right to propose* to the Federal Power Commission such *changes* as it deems necessary *in the rates and terms of service* provided herein," and, in Article IX, that if Natural should require volumes greater than 158,000 Mcf on any day, Transwestern will apply to the Commission for authorization to install and operate the required additional facilities for such additional volumes, *"at appropriate rates and conditions of service."*

The staff properly contend that those proposed contract provisions make it uncertain as to how long Transwestern's cost advantage would continue even at the lowest proposed pipeline capacity since Transwestern reserves the right to file a higher rate at any time. Furthermore, the evidence indicates that the 158,000 Mcf per day capacity on which the Rate Schedule X-7 rate is based would be inadequate almost before it is put into use or soon thereafter.

Additional volumes would soon be required and the charges set forth in Article IV of Rate Schedule X-7 would soon be superseded by whatever "appropriate rates and conditions of service" Transwestern could persuade the Commission to approve. At that time, however, Transwestern would no longer have its present incentive to show a cost advantage such as that on which it bases its present proposal and we have no reason to believe that it would be persuaded by any compunction to seek a new rate which would continue such cost advantage.

The staff properly concludes that the public interest requires that Natural be able to increase its takes of Permian Basin gas as needed to satisfy its customers requirements without unnecessary impediment and expense. Natural and Transwestern would be rivals for Permian Basin gas. Natural serves an area with cold winters, contrasting sharply with the climate in Transwestern's California market. Natural would incur much greater delay and expense in obtaining increased supplies of gas through Transwestern's facilities than through its own facilities.

Whenever Natural would need larger volumes of Permian Basin gas that would make it necessary to increase pipeline capacity, it would have to request Transwestern to construct the additional pipeline facilities that would be needed to transport the larger volumes and negotiate a new agreement with Transwestern, which would include new charges and other terms.

Transwestern would then have to file an application with the Federal Power Commission for a certificate authorizing it to transport increased volumes of gas for Natural and to construct additional facilities as needed.

That would raise questions regarding the allocation of costs of the new facilities, the effect of the proposed expansion on the thermal content of gas delivered to Transwestern's various customers, and other matters. Many interests would be affected. There would be inevitably several interveners in every such proceeding, including Pacific Lighting and Cities Service and probably El Paso, in addition to public utility commissions, municipalities, and distributing company customers of some of the major interveners. That would make a formal hearing necessary.

Furthermore, Natural could be expected to intervene to protect its interests in many proceedings involving Transwestern in which it would not intervene if it were not a transportation customer of Transwestern.

In conclusion, the application of Transwestern to serve Natural and/or Northern is denied because the service and operation and construction of facilities which it proposes in said application is not, and will not be, required by the present or foreseeable future public convenience and necessity.

### ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence and the briefs of the participants, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The applicants, Northern Natural Gas Company, Natural Gas Pipeline Company of America, and Transwestern Pipeline Company are engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale, subject to the jurisdiction of the Federal Power Commission, and each of them is a "natural-gas company" as defined in the Natural Gas Act.

(2) All of the transportation of natural gas authorized herein will be made in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission.

(3) Northern Natural Gas Company is able and willing properly to do the acts and to perform the service proposed in its applications under Docket Nos. CP65-1, CP65-91, CP65-338, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities proposed by Northern Natural Gas Company in said applications are required by the public convenience and necessity and a certificate therefor as hereinafter ordered and conditioned should be issued.

(5) Natural Gas Pipeline Company of America is able and willing to do the acts and to perform the service proposed in its application under Docket No. CP65-169 to the extent that they are included in Phase II of this proceeding, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The construction and operation of the facilities proposed by Natural Gas Pipeline Company of America in its application under Docket No. CP65-169, to the extent that they are included in Phase II of this proceeding, are required by the public convenience and necessity and a certificate therefor as hereinafter ordered and conditioned should be issued.

(7) Public convenience and necessity require that the certificates issued herein and the rights granted thereunder be granted without prejudice to the determination in any future proceeding before the Federal Power Commission in which Natural Gas Pipeline Company of America or Northern Natural Gas Company is a party of what portion of their total system facilities, respectively, should be included in their rate bases.

(8) The applications of Transwestern Pipeline Company under Docket Nos. CP65-208, CP65-236, and CP65-237, should be denied because the service and the operation and construction of facilities which it proposes in said applications are not, and will not be required by the present or future public convenience and necessity.

## ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) Transwestern Pipeline Company's applications under Docket Nos. CP65-208, CP65-236, and CP65-237 are denied.

(B) A certificate of public convenience and necessity is issued to Northern Natural Gas Company authorizing it to construct and operate pipeline facilities from a point of connection with Northern Natural Gas Company's existing compressor station in Beaver County, Oklahoma, to the Coyanosa Field and the Gomez Field in southwest Texas, as described in Northern Natural Gas Company's applications under Docket Nos. CP65-1, CP65-91 and CP65-338, for the transportation of natural gas in interstate commerce.

(C) A certificate of public convenience and necessity is issued to Natural Gas Pipeline Company of America authorizing it to construct and operate pipeline facilities from a point of connection with Natural Gas Pipeline Company of America's existing Amarillo line in Moore County, Texas, to Dagger Draw and the Indian Basin in southeastern New Mexico, as described in Natural Gas Pipeline Company of America's application under Docket No. CP65-169, for the transportation of natural gas in interstate commerce.

(D) All authorizations granted herein are without prejudice to the determination in any future proceeding before the Federal Power Commission in which

Natural Gas Pipeline Company of America or Northern Natural Gas Company is a party of what portion of their total system facilities, respectively, shall be included in their rate bases.

(E) The certificates granted herein and the exercise of any right thereunder are conditioned upon compliance by Natural Gas Pipeline Company of America and Northern Natural Gas Company, respectively, with all applicable Regulations of the Commission under the Natural Gas Act and particularly Section 157.20 of those Regulations.

(F) Each applicant to whom a certificate is issued herein shall report promptly in writing and under oath the dates of commencement and completion of construction of facilities authorized herein and the date of commencement of service through such facilities. Such reports shall be filed with the Commission within 15 days after completion of construction authorized herein.

(G) A certificate issued herein shall be void unless the applicant to whom the certificate is issued accepts it in writing filed with the Commission within 10 days after the date of issuance of this order.

ALLEN C. LANDE,
*Presiding Examiner.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## OFFICIAL NOTICE OF FACTS, DOCKET NO. R-318

## ORDER NO. 339

### AMENDING RULES OF PRACTICE AND PROCEDURE

(Issued March 31, 1967)

The Federal Power Commission by this order is amending its Rules of Practice and Procedure by clarifying § 1.26(d) concerning the official notice of facts.

The Commission's present rule on official notice states that official notice may be taken of "technical or scientific facts of established character peculiarly within the general knowledge" of the Commission. This rule was promulgated shortly before the Administrative Procedure Act took effect (Order No. 132, 18 CFR 1.26(d)) and appears to be a paraphrase of early drafts of the Act. We believe that § 1.26(d) is ripe for revision.

Experience, court cases and the legislative history of section 7(d) of the Administrative Procedure Act indicate that our present rule on the use of official notice is restrictive. The patterns of growth of both the electric power and natural gas industries challenge us to achieve procedural improvements to ensure the effective performance of the Commission's regulatory functions.

Expeditious proceedings have long been recognized as a means to this end. In the judicial sphere, the doctrine of judicial notice was developed as one tool to meet this need for expedition. The administrative adaptation of judicial notice is commonly called "official notice." The use of this different term emphasizes the significant difference between the two doctrines. Professor Davis persuasively argues: "The customary assumption that official notice is merely the administrative counterpart of judicial notice and should therefore be governed by essentially the same principles is fundamentally unsound * * *." Davis, Official Notice, 62 Harv. L. Rev. 537 (1949). The fundamental functional difference between court and agency would appear to be in the role of each as fact-finder. The essence of the judicial process, the adversary system, makes the court a passive arbiter in the search for justice between both parties. An administrative agency on the other hand is charged with an affirmative duty to seek out all relevant and material facts in establishing policy. See *Scenic Hudson Preservation Conf.* v. *F.P.C.*, 354 F. 2d 608 (CA2–1966). And as the Supreme Court has stated: "The process of keeping informed as to regulated utilities is a continuous matter with commissions." *Market Street Ry. Co.* v. *Railroad Commission of California*, 324 U.S. 548, 562 (1945).

As early as 1904, the Supreme Court recognized the unique factfinding needs of administrative agencies. See *I.C.C.* v. *Baird*, 194 U.S. 25, 44. The Attorney General's Committee on Administrative Procedure, whose studies led to enactment of the Administrative Procedure Act, recognized that protection of the public interest "makes it necessary to keep open the channels for the reception of all relevant evidence which will contribute to an informed result." *Final Report*, S. Doc. No. 8, 77th Cong., 1st Sess., 70 (1941). In a similar vein the Attorney General's Manual on the Administrative Procedure Act, pp. 79–80, (1947), explains: "The process of official notice should not be limited to the traditional matters of judicial notice but extends properly to all matters as to which the Agency by reason of its functions is presumed to be expert * * * ."

The Legislative history of the Administrative Procedure Act, S. Doc. No. 248, 79th Cong., 2nd Sess., 1946, indicates that Congress intended the permissible scope of official notice to be broader than the Commission's present rule. An early House bill read: "The taking of official notice as to facts beyond the proof adduced * * * shall be unlawful unless of a matter generally recognized or scientific knowledge of established character * * * ." *Id.* at 143. Another version limited official notice to "any matter of generally recognized fact or any technical or scientific fact of established character * * * . *Id.* at 174.

The Administrative Procedure Act, section 7(d), as passed by Congress, eliminated these restrictive phrases and provides instead that "where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

The present Commission rule may result in an unnecessarily restrictive approach towards official notice in Commission proceedings. This could increase hearing time to the detriment of practitioners, respondents or applicants, and the public. Agencies may take official notice of facts at any stage in a proceeding—even in the final decision" (Attorney General's Manual on the Administrative Procedure Act, 80 (1947)), however, the earlier in a proceeding notice is taken, the greater the "opportunity to show the contrary" of the noticed fact and the fairer the entire procedure.

Therefore, any participant requesting the taking of official notice subsequent to the conclusion of a hearing will henceforth be required to set forth clearly the reasons asserted as justifying his failure to make the request prior to the close of the hearing. This requirement in no way limits the rights of participants to make such requests before the conclusion of a hearing or of the examiner or the Commission to take official notice after the conclusion of a hearing.

Since we have a duty to consider all relevant facts (see *Scenic Hudson Preservation Conf.* v. *F.P.C.*, 354 F. 2d 608 (CA2–1966)), while at the same time affording an opportunity to contest all issues (see *U.S.* v. *Pierce Auto Freight Lines Inc.*, 327 U.S. 615 (1946)) we believe it important that available evidentiary means be fully utilized in developing a record.

The present amendment is intended to permit and encourage the use of official notice to the fullest extent allowed by the Administrative Procedure Act in accordance with the policy of sections 15(b) of the Natural Gas Act (15 U.S.C. 717n(b)) and 308(b) of the Federal Power Act (16 U.S.C. 825g(b)) and consistent with administrative fairness. The presiding examiners are encouraged to utilize official notice as an expeditious aid in regulating the course of hearings.

Official notice "has no other effect than to relieve one of the parties * * * of the burden of resorting to the usual forms of evidence." (*Ohio Bell Tel. Co.* v. *P.U.C.*, 301 U.S. 292, 301 (1937)). Therefore, "the matters thus noticed become a part of the record and, unless successfully controverted, furnish the same basis for findings of fact as does 'evidence' in the usual sense" (Attorney Generals' Manual on the Administrative Procedure Act at 80). Of course, the material to be noticed must meet the requirements of § 1.26(a) of the Rules of Practice and Procedure as to relevancy and materiality, against unduly repetitious or cumulative evidence, and as coming within the test of affecting "reasonable and fair-minded men in the conduct of their daily affairs."

The information in the Commission's public files contains material that is often useful in the decision-making process. Such information in the public official records of the Commission should, in appropriate circumstances, be considered pursuant either to paragraph (c) or (d) of § 1.26 of the Rules of Practice and Procedure.

This rule combines both the rule of procedure and of evidence. The Administrative Procedure Act sets out the procedural rule, while this order and the new § 1.26(d) set out evidentiary guidelines for the taking of official notices in a procedurally fair manner.

*The Commission finds:*

(a) Since the amendment here adopted involves a matter of Commission practice, no prior notice thereof is required by section 4 of the Administrative Procedure Act.

(b) The revision of § 1.26(d), here adopted, is necessary and appropriate for the purposes of the Federal Power and Natural Gas Acts.

*The Commission*, acting pursuant to the authority granted in sections 15 and 16 of the Natural Gas Act, as amended (52 Stat. 829, 830; 15 U.S.C. 717n, 717o) and sections 308 and 309 of the Federal Power Act, as amended (49 Stat. 858; 16 U.S.C. 825g, 825h), *orders:*

(A) Paragraph (d) of § 1.26, Part 1, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations is revised to read as follows:

§ 1.26 Evidence.

* * * * * * *

(d) *Official notice of facts.* Official notice may be taken by the Commission and the presiding examiner of such matters as might be judicially noticed by the courts of the United States, or any matters as to which the Commission by reason of its functions is an expert. Any participant shall, on timely request, be afforded an opportunity to show the contrary. Any participant requesting the taking of official notice after the conclusion of the hearing must set forth the reasons claimed to justify failure to make the request prior to the close of the hearing.

(Secs. 15, 16, 52 Stat, 829, 830; secs. 308, 309, 49 Stat. 858; 15 U.S.C. 717n, 717o; 16 U.S.C. 825g, 825h)

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-50

### ORDER VACATING DATES FOR SUBMISSION OF EVIDENCE AND FOR HEARING

(Issued March 31, 1967)

In Opinion Nos. 510, 36 FPC 1107, and 510-A, 37 FPC 314, the Commission provided for further evidentiary hearings in this proceeding whereby Panhandle Eastern Pipe Line Company (Panhandle) seeks a certificate of public convenience and necessity to make a direct sale of natural gas to H. K. Porter Company, Inc. (Porter). In opposition thereto, the City of Fulton, Missouri, seeks an order under Section 7(a) of the Natural Gas Act directing Panhandle to provide the City with a supply of interruptible gas so that the City may serve Porter. The necessity for additional evidentiary hearings has been delineated in Opinion Nos. 510 and 510-A. Pursuant thereto, prehearing conferences were held before the Presiding Examiner on February 28, and March 10, 1967, at which times additional information was requested of the applicants. Panhandle refused to supply certain specific items, and the Presiding Examiner ruled that it need not do so.

On March 16, 1967, the City of Fulton filed with the Commission an appeal from this ruling, contending that the data sought "relates to issues for which the Commission remanded the case, and is necessary for the preparation by the City of its direct case." Panhandle on March 28, 1967, and Porter on March 23, 1967, filed their replies to the City's appeal.

In order to allow the Commission sufficient time to consider and decide the City's appeal, and to allow the parties sufficient time to prepare their cases in the light of the decision, it is necessary to postpone the submission of prepared testimony and the commencement of hearing beyond the dates set by the Presiding Examiner. The period of postponement will be fixed in accordance with later order of this Commission.

*The Commission finds:*

It is necessary and appropriate to the proper administration of the Natural Gas Act and resolution of pertinent issues in this proceeding that the appeal of the City be allowed as specified herein and that the dates previously set by the Presiding Examiner for submission of prepared testimony and hearing be vacated and reset as provided herein.

*The Commission orders:*

The dates previously set by the Presiding Examiner for submission of prepared testimony and hearing are vacated.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## UNITED FUEL GAS COMPANY, DOCKET NO. G-10658

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued March 31, 1967)

On January 16, 1967, United Fuel Gas Company (Petitioner), filed in Docket No. G-10658 a petition to amend the order issued in said docket on September

18, 1956, 16 FPC 978, as amended by the order issued October 27, 1964, 32 FPC 1221, by authorizing an increase in the delivery of a maximum daily quantity of natural gas on an interruptible basis for a specific period to one of its industrial customers, all as more fully set forth in the petition to amend.

By the order issued in the instant proceeding on September 18, 1956, Petitioner was authorized to deliver a maximum of 35,000 Mcf of natural gas per day to E. I. du Pont de Nemours Company (du Pont), Belle, Kanawha County, West Virginia. By the amending order issued October 27, 1964, Petitioner was authorized to increase its deliveries to du Pont to a maximum of 60,000 Mcf per day.

Petitioner now requests that it be authorized to deliver to du Pont for the period from April 1, 1967, through October 1, 1967, a maximum daily quantity of 70,000 Mcf in order that du Pont may effectuate certain changes in its plant facilities.

Due notice of the filing of the petition to amend and opportunity for hearing thereon have been given by publication in the Federal Register on February 1, 1967 (32 F.R. 1147). No protest, petition to intervene, or notice of intervention other than a notice of intervention filed by the Public Service Commission of West Viriginia on February 23, 1967 and withdrawn on March 15, 1967, has been filed in the proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 18, 1956, as amended October 27, 1964, in Docket No. G-10658 be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued September 18, 1956, as amended October 27, 1964, is further amended so as to authorize Petitioner to transport and deliver up to 70,000 Mcf of natural gas daily on an interruptible basis to du Pont in lieu of the 60,000 Mcf of interruptible natural gas presently authorized.

(B) The increase in the limitation of the volume of natural gas to be delivered to du Pont, from 60,000 Mcf/d to 70,000 Mcf/d granted herein shall expire on October 1, 1967.

(C) The certificate order issued in Docket No. G-10658 is amended on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contract maximum obligations of Petitioner for firm service to its customers.

(D) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## WISCONSIN ELECTRIC POWER COMPANY, DOCKET NO. E-7336

### ORDER AUTHORIZING ACQUISITION OF COMMON STOCK

(Issued March 31, 1967)

Wisconsin Electric Power Company (Applicant) filed an application on February 9, 1967, pursuant to Section 203 of the Federal Power Act seeking authority to acquire $13,000,000 in par amount of common stock of its subsidiary, Wisconsin Power Company (Subsidiary).

Applicant is incorporated under the laws of Wisconsin with its principal business office at Milwaukee, Wisconsin and is engaged principally in the electric utility business in southeastern Wisconsin.

The Subsidiary is incorporated under the laws of Wisconsin with its principal business office at Milwaukee, Wisconsin and is engaged principally in the electric utility business in east-central and north-eastern Wisconsin and in the upper peninsula of Michigan. All of the outstanding shares of Common Stock of Subsidiary are presently owned by the Applicant.

Applicant seeks authority to acquire $13,000,000 in par amount of Common Stock of Subsidiary, of which $10,000,000 (500,000 shares—par value $20 per share) is to be purchased for cash at the par amount thereof and $3,000,000 (150,000 shares—par value $20 per share) is to be delivered by Subsidiary to Applicant as a Common Stock dividend. It is proposed that the $10,000,000 of Common Stock will be issued in amounts and at intervals between March 27, 1967 and December 31, 1967 as required to meet construction expenditures of Subsidiary.

The Applicant, in 1966, transferred $3,000,000 in cash to the Subsidiary to enable it to pay for part of its construction program which amount is now to be converted into Common Stock. This is to be accomplished by the Subsidiary's payment of a stock dividend of 150,000 shares of Common Stock, par value $20 per share, total par value $3,000,000.

The Subsidiary's 1967 construction program calls for the expenditure of approximately $23.7 million. The major terms which will be financed in part by the proposed issuance include $16.1 million for work on the 450 mw nuclear plant at Point Beach, Wisconsin; $1.6 million for a 77 mile, 345 kv line from Stiles, Wisconsin to Plains Substations in Michigan; and $202,000 for a 20 mile, 345 kv line from Point Beach plant to Forest Junction Substation in Wisconsin.

Applicant represents that the proposed undertaking, including the acquisition by Applicant of the Common Stock of Subsidiary, is reasonable and consistent with the public interest since the proceeds to be paid by Applicant to Subsidiary will be expended by that company for additions to its utility plant, thereby benefiting the public served by it and Applicant further represents that the purchase price to be paid for the 500,000 shares of Common Stock which it proposes to purchase is reasonable and bears a fair relationship to the sums invested in the utility assets underlying the stock to be acquired.

Written notice of the application has been given to the Michigan Public Service Commission, the Wisconsin Public Service Commission and to the Governors of those States. Notice was also published in the Federal Register on February 28, 1967 (32 F.R. 3373), stating that any person desiring to be heard or to make any protest with reference to said application should on or before March 10, 1967, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received. The Public Service Commission of Michigan and the Public Service Commission of Wisconsin approved the transaction by orders issued March 1, 1967 and March 13, 1967, respectively.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order

**issued October 31, 1956, *Wisconsin Electric Power Company, et al.* (16 FPC 1145).**

**(2) Subsidiary, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued September 17, 1958, *Wisconsin Michigan Power Company, et al.* (20 FPC 358).**

**(3) By the proposed transaction, Applicant will acquire securities of another public utility within the meaning and subject to the requirements of Section 203 of the Federal Power Act.**

**(4) The proposed acquisition of the securities of Subsidiary by Applicant as recited above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Act for the reasons set forth above.**

**(5) The period of public notice in this matter is reasonable.**

***The Commission orders:***

**(A) The proposed acquisition of the securities of Subsidiary by Applicant, as described above, is hereby authorized and approved upon the terms and conditions as set forth in the application, subject to the provisions of this order.**

**(B) Applicant shall record the transaction as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.**

**(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.**

**(D) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## WILLIAM HARVEY DENMAN, TRUSTEE, ET AL. v. J. M. HUBER CORPORATION, DOCKET NO. RI67-113; MOBIL OIL CORPORATION v. CARL F. MATZEN, ET AL., DOCKET NO. RI67-114; WESTERN NATURAL GAS COMPANY v. ELMER HENNIGH, ET AL., DOCKET NO. RI67-310

### ORDER CONSOLIDATING PROCEEDINGS AND SETTING MATTERS FOR HEARING

(Issued April 3, 1967)

William Harvey Denman, Trustee, *et al.* (Denman), has filed a petition *inter alia*, for a declaratory order (Docket No. RI67-113) that this Commission does not have jurisdiction over the amount of gas royalties payable to them by J. M. Huber Corporation (Huber), their lessee, under the terms of certain oil and gas leases covering land in Hutchison and Carson Counties, Texas. Huber, subject to the Commission's jurisdiction, sells the gas product produced from those leaseholds to the Northern Natural Gas Company (Northern).

Denman's petition was filed following the Fifth Circuit's decision in *Huber Corp.* v. *Wm. Denman, et al.*, 367 F. 2d 104. In that case the lessors had sought royalty payments computed on the basis of actual "market price," rather than on the basis of the rates that were being collected by Huber from Northern. The court agreed that the lessors, as a contractual matter, were entitled to royalty payments computed on the basis of actual "market value" but held (367 F. 2d at 121):

> Specifically, the District Court should refer further action including fixing of the actual market price pending invocation by the parties of a ruling by the FPC: (1)(a) as to the jurisdiction of the FPC over payment for royalties for gas sold for resale and transported in interstate commerce, (b) the status of a royalty interest owner's transaction as a sale under the Act where incident to a sale for resale and transportation in interstate commerce, (c) the status of the royalty interest owner's transaction in this case as a sale under the Act; (2) if it should be determined that the FPC has jurisdiction and that at some stage or time the royalty transaction for payment therefor constitutes a sale under the Act (a) the filing requirements, if any, for certification and if required by whom and when, (b) the extent, if any, to which prior application to and approval by FPC is required as to (i) the type, kind or nature of the royalty clause, (proceeds, market price, etc.), the percentage thereof (e.g., ⅛th, ¼th, etc.), (ii) monetary payments which are or will likely be in excess of relevant FPC ceilings. [footnote omitted]

Subsequent to the filing of the Denman petition the Mobil Oil Corporation and the Western Natural Gas Company filed complaints raising the same jurisdictional question with respect to their numerous royalty contracts in Kansas' Hugoton field. The complaints were filed in response to suits instituted against Mobil and Western Natural in the Kansas Courts wherein their lessors claim that they are entitled to royalty payments computed on the basis of "values" which exceed the producers' effective rates.

Though there may be certain factual differences, the same basic question is presented by the complaints filed by Mobil and Western Natural and the Denman petition: can persons contractually entitled to royalty payments for natural gas sold for resale in interstate commerce be classified as "natural-gas companies" within the meaning of the Natural Gas Act and subject to the jurisdiction of the Commission. It is therefore appropriate to consolidate these proceedings for hearing as hereinafter ordered. The issuance of this hearing order should not be viewed as the enunciation of the Commission's tentative position that we have jurisdiction over royalty owners. The Commission has not as yet made any such determination of the jurisdictional question and will not until consideration of this proceeding.

The hearing in these cases shall be confined to resolving whether the Commission has jurisdiction over a landowner's royalty interest in natural gas leaseholds and, if answered in the affirmative, how such jurisdiction should be implemented. More specifically the parties should address themselves to the method which should be used in computing gas royalty payments and what additional filing requirements, if any, should be imposed and upon whom.[1]

The hearing will not be concerned with whether, assuming that the Commission has jurisdiction over royalty interests, such jurisdiction extends to royalty interests owned by a state, the United States, or their agencies. It is sufficient to note here that, even if the Commission has jurisdiction over other holders of royalty interests, there is still a further question as to whether such governmental entities could be classified as persons within the definition of "natural-gas companies" in Section 2(6) of the Act. Since none of the complaints relate to royalty interests held by such entities, and there is no suggestion that the underlying problem of royalty contract construction relates to such interests, it is not necessary to resolve that jurisdiction question here.

The Examiner will consider the questions raised in Docket No. RI67-114 with respect to helium only as the facts on this subject bear upon the royalty interests of landowners in natural gas leaseholds. These will in no way require consideration of any question foreclosed to this Commission's jurisdiction by the Helium Act (74 Stat. 918), 50 U.S.C. Sec. 167l.

Contractual issues relating to the specific royalty payments to which any particular lessor is entitled under this lease agreement will not be the subject of this hearing. Moreover, the hearing will not be concerned with the effective rate problem presented in Western Natural's complaint.

We shall provide for a prehearing conference at which the factual matters to be resolved by formal evidentiary hearing, if any, will be ascertained. It is hoped that all matters which can be resolved without the necessity for a formal presentation will be settled by stipulation.

Denman has requested that the hearing be held in Fort Worth, Texas. Matzen has requested that the hearing be held in Hugoton, Kansas. Both requests are predicated on the desirability of having individual landowners in attendance. However, in view of the widesweeping significance of this proceeding and in the expectation that it will be attended by interested groups from all parts of the country, we find that it would be inappropriate to schedule the hearing outside of Washington, D.C.

The State of Texas has filed notices of intervention in Docket Nos. RI67-113 and RI67-114. The State Corporation Commission of the State of Kansas has filed similar notices in Docket Nos. RI67-114 and RI67-310.

*The Commission orders:*

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 7, 14, 15 and 16 thereof, the Commission's Rules of Practice and

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[1] For example, assuming that the lessor-lessee sale is jurisdictional it may, nevertheless, not be necessary for the royalty owners to make any filing with this Commission. See Section 154.91(e) of our Regulations under the Natural Gas Act.

Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), Docket Nos. RI67-113, RI67-114 and RI67-310 are consolidated and a public hearing shall be held on the issues set forth in the body of this order.

(B) A presiding examiner, to be hereinafter designated by the Chief Hearing Examiner, shall preside at both the prehearing conference and the hearing.

(C) Pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference shall commence at 10:00 a.m., (EDT) on May 9, 1967, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of effectuating this order.

(D) Following the prehearing conference, the Presiding Examiner shall give notice of the date of hearing and shall prescribe such other procedures as he deems appropriate in the disposition of these matters.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.37(f)) on or before April 24, 1967. Persons who do not wish to participate formally but nevertheless desire to have their views presented may file *amicus* briefs provided that they indicate their intention to file such a brief by the aforementioned date. The presiding examiner shall prescribe the date by which such briefs are to be filed.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. RP67-9

### ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING, WAIVING NOTICE REQUIREMENTS, APPROVING STIPULATION AND AGREEMENT AND REQUIRING REFUNDS

(Issued April 3, 1967)

On January 26, 1967, El Paso Natural Gas Company (El Paso), tendered for filing revised tariff sheets, to become effective January 1, 1967, and a "Stipulation and Agreement".[1] The proposed tariff revisions reflect rate decreases which will reduce the annual jurisdictional revenues of El Paso's Southern and Northwest Divisions by $11,820,063 and $3,597,004, respectively, based on estimated sales for the twelve-month period ending December 31, 1967.[2]

El Paso's Stipulation and Agreement contains provisions whereby the company proposes to (1) adopt the principles set forth in Opinion No. 417, *Alabama-Tennessee Natural Gas Company*,[3] relating to the flow-through of the benefits derived from taking tax deductions based on the use of liberalized depreciation, and (2) undertake specific rate reduction and refund obligations, as set forth more fully below.

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[1] Subsequent to January 26, El Paso entered into discussions with certain customers and interested state commissions, as a result of which El Paso modified its proposals on February 20, 1967. The terms discussed herein are those set forth in El Paso's February 20 revision.

[2] The revised tariff sheets also adopt a pressure base of 14.73 psia for the Southern Division. The pressure base for the Northwest Division is already at 14.73 psia.

[3] 31 FPC 208 (1964), aff'd., 359 F. 2d 318 (CA5-1966), cert. denied, 385 U.S. 847 (1966).

In Opinion No. 500,[4] we granted to El Paso a certificate of public convenience and necessity and required the company to effect certain rate reductions in connection therewith. We also noted in that opinion that further proceedings would be initiated regarding the applicability of the *Alabama-Tennessee* principles to El Paso.

Accordingly, on August 30, 1966, 36 FPC 558, we issued an order in this docket directing El Paso to show cause why its rates should not be reduced to that level resulting from the flow-through of the actual liberalized depreciation tax reductions in 1965 and the reduction of rate base by the accumulated reserve balance in Account 282 ("Accumulated Deferred Income Taxes—Liberalized Depreciation") as of December 31, 1965.

El Paso submitted the instant proposals, after conference with certain customers, interested state commissions, and representatives of our Staff, to comply with the requirements of Opinion No. 500 and those of our show cause order. In addition to the immediate rate reductions described above, totaling $15,417,067, El Paso's Stipulation and Agreement sets forth terms which may be summarized in principal part as follows:

(i) *Liberalized Depreciation (Article III)*. As of January 1, 1967, El Paso shall discontinue the use of deferred tax accounting for liberalized depreciation and shall adopt "flow-through" accounting. In this connection, El Paso has submitted a plan for disposition of the balance in Account 282 in accordance with Opinion No. 417 under which it will be permitted to amortize the balance in Account 282 at December 31, 1966, over a period of 13-1/3 years by crediting Account 411 ("Income Taxes Deferred in Prior Years—Credit") and debiting Account 282. This increase in pipeline income has in turn been reflected in the reduction of rates herein. In any rate or certificate proceeding involving El Paso, its rate base shall be reduced by the average balance in Account 282.

El Paso reserves the right to take advantage of any changes which may occur with respect to the principles set forth in the *Alabama-Tennessee* and *Midwestern*[5] cases, whether through legislation, court decision, change in Commission policy, or otherwise.

(ii) *Contingent Refunds—Suppliers' Rates (Article IV)*. El Paso shall flow-through the jurisdictional portions of any refunds it receives attributable to gas purchased during the periods commencing November 1, 1963 (Southern Division), and January 1, 1964 (Northwest Division), which are not subject to refund obligations under El Paso's agreement dated November 1, 1963, and December 31, 1963.

El Paso shall flow-through the jurisdictional portion of any refunds it receives attributable to gas purchased on and after January 1, 1967, which result from reductions in gas supplier rates below the levels in effect on December 31, 1966. This provision shall not apply to refunds resulting from increases in suppliers' rates becoming effective on or after January 1, 1967, unless such refunds relate to increases utilized to offset reductions in rates pursuant to the contingent rate reduction provisions set forth below, nor shall it apply to refunds resulting from costs of gas from sources of supply connected to El Paso's system on or after January 1, 1967. The disposition of those refunds which El Paso has no specific obligation to flow through, however, shall be governed by the applicability of such principle as may be finally established in the proceeding now before the Commission in Docket No. RP66-12.

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[4] *Transwestern Pipeline Company, et al.*, Docket No. CP63-204, *et al.*, issued July 26, 1966, 36 FPC 176.

[5] *Midwestern Gas Transmission Company, et al.*, Docket No. RP61-19, *et al.*, Opinion No. 497, issued July 15, 1966, 36 FPC 61.

(iii) *Contingent Rate Reductions—Suppliers' Rates (Article V).* El Paso agrees that if, during the period commencing January 1, 1967, and ending on the first date on which a rate increase filed by El Paso becomes effective, a reduction is made in any supplier's rate in effect on December 31, 1966, for which contingent rate reductions are not required by its 1963 Stipulations, El Paso shall file appropriate changes in its rate schedules to reflect the effect of the jurisdictional portion of the reduction. Such reductions may be offset to the extent of any increase in the cost of gas supplied to El Paso which may become effective on or after January 1, 1967.

(iv) *Deferred Rate Reduction and Refunds—Tax Rate Increase (Article VI).* El Paso shall reserve a portion of the proposed rate reduction until January 1, 1968, to offset a possible increase in the corporate income tax rate from 48% to 50.88%. The portion being reserved is 0.08¢ per Mcf in the Southern Division and 0.10¢ per Mcf in the Northwest Division. If an increase in the income tax rate has not been enacted or become effective on or before January 1, 1968, El Paso will further reduce jurisdictional rates, effective January 1, 1968, by the amount so reserved and refund the amounts accumulated during the period commencing January 1, 1967, with interest at 7 percent. If Congress enacts an increase in the corporate income tax rate from 48% to 50.88% on or before January 1, 1968, no rate reduction will be filed.

The portions of the rate reductions which are reserved may also be used to offset additional amounts of Federal taxes which are payable as a surcharge computed as a percentage of El Paso's Federal income taxes, provided that El Paso shall reduce its rates and make refunds as provided above if Congress has not enacted such surcharge on or before January 1, 1968.

If Congress enacts a tax rate increase or surcharge, and such enactment is made effective subsequent to January 1, 1967, or imposes additional taxes amounting to less than the equivalent of an increase in the corporate income tax rate from 48% to 50.88%, or if the increase is enacted for a limited time, then El Paso shall make appropriate rate reductions and/or refunds as set forth in Article VI.

(v) *Rate Reduction Filings (Article VII).* The revised tariff sheets filed with El Paso's Stipulation and Agreement shall be made effective January 1, 1967, upon the issuance by the Commission of an order approving the Stipulation. Any amounts collected from El Paso's jurisdictional customers after January 1, 1967, in excess of the reduced rates set forth in the revised tariff sheets will be refunded without interest thirty days after the issuance of such order.

After due notice of the proposed settlement, comments were received from the Public Utility Commissioner of Oregon, the Washington Utilities and Transportation Commission, and the Wyoming Public Service Commission. No objections were set forth in these responses.[6]

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[6] The Washington Utilities and Transportation Commission requested that Northwest Pipeline Corporation be made a signatory to El Paso's proposed filing. In view of the present status of the El Paso divestiture proceeding, however, such concurrence is not appropriate.

Our review of the documents and data submitted in support of the proposed Stipulation and Agreement, including the cost of service data utilized for such purposes, indicates that El Paso has fully complied with the requirements of the show cause proceeding in Docket No. RP67-9, and with the rate reduction portions of the Commission's order accompanying Opinion No. 500. The proposed settlement is proper and in the public interest.

*The Commission finds:*

(1) The settlement of this proceeding on the basis of the Stipulation and Agreement filed by El Paso on January 26, 1967, and amended by its filing of February 20, 1967, is proper and in the public interest and should be approved and made effective subject to the terms and conditions hereinafter ordered.

(2) Good cause exists for waiving the requirements of Part 154 of the Commission's Regulations under the Natural Gas Act in order that the revised tariff sheets filed with El Paso's Stipulation and Agreement may become effective as of January 1, 1967, as hereinafter provided.

*The Commission orders:*

(A) The provisions of Part 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and the revised tariff sheets tendered for filing with the above-described Stipulation and Agreement are accepted for filing to become effective as of January 1, 1967.

(B) The Stipulation and Agreement filed by El Paso on January 26, 1967, amended on February 20, 1967 (incorporated herein by reference and made a part of this order), is approved and made effective, subject to the terms and conditions of this order.

(C) El Paso shall comply fully with each of the obligations it has assumed in the Stipulation and Agreement approved in paragraph (B) above.

(D) Within 30 days of the effective date of this order, El Paso shall refund to its jurisdictional customers any amounts collected from said customers on and after January 1, 1967 in excess of the amounts which it would have collected had the revised tariffs accepted in paragraph (A) above, been in effect at all times from and after January 1, 1967. Such refunds shall be made without interest, in accordance with the terms of Article VII of El Paso's Stipulation and Agreement.

(E) Within 15 days of making the refunds prescribed in paragraph (D) above, El Paso shall report to the Commission, in writing and under oath, the amount of the refund made to each of its customers, and shall serve a copy of such report upon each of the customers receiving a refund. Concurrently, El Paso shall file with the Commission releases from its customers showing receipt of the appropriate amounts.

(F) Within 15 days from any date upon which El Paso makes further refund payments (accompanied by reports to recipient customers and to the Commission) pursuant to Articles IV, V or VI of its Stipulation and Agreement, El Paso shall file with the Commission copies of releases, signed by those customers to whom it has made such payments, acknowledging receipt of the amount refunded.

(G) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims which may be made by the Commission, by the Respondent, by the Commission Staff, or by any other party affected by this order, in any proceedings now pending or hereafter instituted by or against El Paso or any other persons or parties affected by this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-208

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 3, 1967)

On January 11, 1967, Michigan Wisconsin Pipe Line Company (Petitioner) filed in Docket No. CP66-208 a petition and supplement thereto on February 3, 1967, to amend the order issued in said docket on May 24, 1966, 35 FPC 777, as amended by the orders issued September 2, and September 12, 1966, 36 FPC 571, 617, respectively, by authorizing the increase in the Maximum Daily Quantity of natural gas delivered to two of its customers, all as more fully set forth in the petition to amend.

By the order issued May 24, 1966, Petitioner was authorized, *inter alia*, to increase deliveries of natural gas to certain customers. By the amending order of September 2, 1966, Petitioner was authorized to increase deliveries of natural gas to certain customers one of which was the City of Bloomfield, Iowa.

By the instant petition to amend Petitioner requests authorization to increase the Maximum Daily Quantity of natural gas delivered to the City of Bloomfield, Iowa (Bloomfield) by an additional 150 Mcf for a total of 1,750 Mcf per day, and to increase the Maximum Daily Quantity of natural gas delivered to Illinois Power Company (Illinois Power) by an additioual 400 Mcf per day for a total of 5,870 Mcf. Service agreements dated December 27, 1966 and filed January 11, 1967 supersede prior agreements of Bloomfield and Illinois Power dated March 18, 1966, and March 17, 1966, respectively. Petitioner requests that the new service agreements be accepted for filing effective as of January 1, 1967. To eliminate possible overrun penalties the superseding service agreements are accepted for filing effective as of January 1, 1967.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on January 31, 1967 (32 F.R. 1106). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require (1) that the Commission's order issued May 24, 1966 in Docket No. CP66-208 be amended as hereinafter ordered, and (2) the executed superseding service agreements filed with the Commission on January 11, 1967 be accepted for filing, effective January 1, 1967.

*The Commission orders:*

(A) The Commission's order, issued May 24, 1966 in Docket No. CP66-208 is amended by authorizing Michigan Wisconsin to increase maximum daily quantities as requested by Petitioner and shown hereinbefore, all as hereinbefore described and as set forth in the subject petition to amend.

(B) The service agreements filed with the Commission on January 11, 1967, are accepted for filing, effective as of January 1, 1967.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MISSISSIPPI POWER & LIGHT COMPANY, DOCKET NO. E-7334

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued April 3, 1967)

Mississippi Power & Light Company (Applicant) filed an application on January 19, 1967 for an order, pursuant to Section 203 of the Federal Power Act, authorizing the lease and purchase from Southwest Mississippi Electric Power Association (Southwest) of a three-phase, wood pole, 115 kv transmission line, 0.8 miles in length, extending from the Applicant's existing Vicksburg-Natchez 115 kv line to a substation of Southwest near Lorman, Mississippi.

Applicant is incorporated under the laws of Mississippi with its principal business office at Jackson, Mississippi and is engaged in the generation, transmission, purchase, distribution, and sale of electric energy in 45 of the 82 counties in the State.

Southwest owns and operates a cooperative distribution system serving rural areas and small communities in ten counties in the southwestern corner of the State of Mississippi. Southwest has no generating facilities and purchases its entire energy requirements from Applicant. In 1965, Southwest received 60,807,500 kwh from Applicant and delivered 51,769,281 kwh to 10,718 retail customers.

Under an Agreement for Purchase of Power, dated May 31, 1966, between the Applicant and Southwest, the latter agreed to purchase electric energy from the Applicant at a substation to be constructed by Southwest near Lorman, Jefferson County, Mississippi. To provide for the delivery of this energy, the Applicant and Southwest on the same date entered into a related Agreement for the Construction, Lease and Purchase of a Transmission Line.

Under this latter Agreement the Applicant agreed to construct for the account of Southwest, a three-phase, wood pole, 115 kv transmission line, 0.8 miles in length from the Applicant's existing Vicksburg-Natchez 115 kv line to the substation of Southwest near Lorman, Mississippi. After completion of the transmission line, Southwest agreed to pay to the Applicant an amount equal to the Applicant's cost of the line. The line has been constructed at a cost of $58,473.70.

As of the date Southwest reimburses the Applicant for the cost of the line, Southwest will lease the line to the Applicant for a period of ten years at an annual rent of 2½% of the amount paid by Southwest for the line. In addition, under the same Agreement, the Applicant agreed to purchase the line over the ten-year period of the lease by making annual payments of 7½% of the amount paid by Southwest for the line. Upon receipt by Southwest of the tenth and last payment, title to the line free of all liens and encumbrances is to be transferred to the Applicant.

Annual rent of 2½% of the cost of the line will mean that the Applicant will pay rent of $1,461.84 each year for ten years. Applicant proposes to charge these payments to Operation Expense, Account 567-Transmission Rents. Southwest will use an annual depreciation rate of 2½% on its books. Therefore, the Applicant will only reimburse Southwest for depreciation and this will mean that the Applicant will be charging the same amounts to Rents as it would be recording as Depreciation if the facilities were recorded on the

Applicant's books, assuming use of the same depreciation rate. Annual purchase payments of 7½% of cost will be $4,385.53 each year for ten years. On the books of the Applicant, these payments will be charged to Account 186-Miscellaneous Deferred Debits, an asset account. At the end of the ten-year period, the balance in Account 186-Miscellaneous Deferred Debits will equal the depreciated original cost of the line. The Applicant will then record the acquisition by a debit to Account 101-Electric Plant in Service, for the original cost; by a credit to Account 186-Miscellaneous Deferred Debits, to close this account; and by a credit to Account 108-Accumulated Provision for Depreciation of Electric Plant in Service, for the difference between the amount debited to Account 101 and the amount credited to Account 186.

From an operational viewpoint, Applicant represents that its ownership of the line is preferable and in the public interest. The circuit breakers at Natchez and Vicksburg will operate to clear any fault on the Natchez-Vicksburg line and on the tap to Lorman Substation. Applicant now has air patrol of its own transmission lines. Patrolling of the tap to Lorman Substation can be done at a negligible increase in Applicant's cost of this service. Applicant also has greater resources in equipment and personnel for transmission line maintenance than Southwest. On its latest borrowing, Applicant paid an interest rate of 5%. Using this rate, as basis for comparison, the proposed transaction will result in an annual interest saving to the Applicant of about $1,330 per year.

Written notice of the application has been given to the Governor of the State of Mississippi and to the Public Service Commission of that State. Notice was also published in the Federal Register on February 4, 1967 (32 F.R. 2482) stating that any person desiring to be heard or to make any protest with reference to the application should on or before February 20, 1967, file with the Federal Power Commission petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received. The Mississippi Public Service Commission approved the transaction by an order issued April 5, 1966.

*The Commission finds:*

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the States of Arkansas, Louisiana, and Tennessee and consumed in the State of Mississippi, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce or solely for the transmission of electric energy consumed wholly by the transmitter. Applicant, therefore, is a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Southwest, another person within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed lease and acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

*The Commission orders:*

(A) The proposed lease and acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and as set forth above in this order.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–150

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 3, 1967)

On February 3, 1967, Natural Gas Pipeline Company of America (Petitioner) filed in Docket No. CP64–150 a petition to amend the order of the Commission in said docket issued November 8, 1965, 34 FPC 1258 (Opinion No. 480), and as amended by the order issued February 7, 1966, 35 FPC 189, which authorized the development of its Sayre Storage Field by the construction and operation of necessary facilities and the construction and operation of certain field gathering and transportation facilities, all as more fully set forth in the petition to amend.

Petitioner states that due to problems encountered in reworking the originally authorized gas wells and its discovery that the additional oil wells should be reworked, it has been unable to complete its well reworking program and put its Sayre Storage Field into operation within the time prescribed by the Commission's order of November 8, 1965, as amended in this proceeding, and Petitioner therefore requests that the Commission extend the time for completion of construction of all facilities to December 1, 1967.

Petitioner estimates the new, total cost of constructing the proposed and already authorized facilities at $6,699,140, an increase of $1,641,140 from the originally proposed cost of $5,058,000.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on February 15, 1967 (32 F.R. 2914). No petition to intervene, notice of intervention, or protest to the granting of the petition to amend has been filed.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued November 8, 1965 in Docket No. CP64–150 be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued November 8, 1965 in Docket No. CP64–150 is further amended to authorize Petitioner to rework 47 wells, drill 2 wells and to extend the time for completion of construction of all facilities to December 1, 1967.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66–280

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 3, 1967)

On March 14, 1967, United Gas Pipe Line Company (Petitioner), filed in Docket No. CP66–280 a petition to amend the order issued in said docket on July 7, 1966, 36 FPC 28, so as to extend the time to July 7, 1967, within which the condition set forth in paragraph (C) of such order must be complied with, all as more fully set forth in the petition to amend.

By order issued July 7, 1966, the Federal Power Commission granted Petitioner a certificate of public convenience and necessity authorizing the construction and operation of approximately 7.35 miles of 8-inch pipeline and appurtenant facilities beginning at main line valve on Petitioner's 30-inch Offshore to Kosciusko main line at approximately Milepost 190.7 and extending in an easterly direction to end at a point in the Southeast ¼ of Section 26, Township 8 North, Range 21 West, Lawrence County, Mississippi.

Paragraph (C) of said order provided that the transportation of gas as authorized by the certificate was to commence within three months of July 7, 1966. By letter dated August 31, 1966, the Acting Secretary of the Commission granted an extension of such date to April 7, 1967.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 7, 1966 in Docket No. CP66–280 be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued July 7, 1966 in Docket No. CP66–280 is amended so as to extend the time for completion of the authorized facilities to July 7, 1967.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP67-197

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 4, 1967)

On January 9, 1967, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP67-197 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities for the transportation and delivery of natural gas in interstate commerce to an industrial customer, all as more fully set forth in the application.

Applicant requests authorization to construct and operate approximately 500 feet of 4-inch market lateral and related facilities, extending from Applicant's existing 10-inch Line AM-22 to the site of the plant of Union Carbide Corporation (Union Carbide) in Garland County, Arkansas. By means of these facilities Applicant proposes to supply Union Carbide's estimated interruptible requirements of 4,800 Mcf of gas per day, at a maximum, and 1,642,500 Mcf of gas per year.

The total estimated cost of the proposed facilities is $12,900, which cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 30, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 26, 1943, in Docket No. G-252 (3 FPC 910).

(2) The proposed construction and operation of facilities and transportation and delivery of natural gas as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs

(a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation and delivery of up to 4,800 Mcf daily of natural gas as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) The certificate issued is granted on the express condition that (1) the facilities authorized shall not be used to transport more than 4,800 Mcf daily of interruptible gas to Union Carbide Corporation's said plant and (2) the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## THE MANUFACTURERS LIGHT AND HEAT COMPANY, DOCKET NO. CP67-202

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 4, 1967)

On January 16, 1967, The Manufacturers Light and Heat Company (Applicant) filed in Docket No. CP67-202, as supplemented on February 20, 1967, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for a new delivery point for an existing customer, the Stroudsburg Gas Company, and the sale and delivery of natural gas for resale in and about the borough of Delaware Water Gap, Smithfield Township, Monroe County, Pennsylvania, all as more fully set forth in the application, as supplemented, in this proceeding.

Specifically, Applicant proposes to construct and operate a sales measuring station on its 14-inch line in Smithfield Township and to deliver gas at said point to Stroudsburg's Delaware Water Gap Division for resale in said borough. Delaware Water Gap's third-year peak day and annual natural gas requirements are 335 Mcf and 36,945 Mcf, respectively.

The total estimated cost of the proposed facilities is $11,340, which cost will be financed from funds on hand.

Applicant renders natural gas service to Stroudsburg under Applicant's FPC Gas Rate Schedules CDS-1 and WS.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on March 30, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement, and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, The Manufacturers Light and Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G-593, *et al.* (4 FPC 821).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) Applicant should file with the Commission a revised service agreement with Stroudsburg to cover the proposed additional delivery point.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, The Manufacturers Light and Heat Company, to construct and operate the proposed facilities and to sell and deliver an additional 335 Mcf of natural gas per day to Stroudsburg as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's

Regulations under the Natural Gas Act, within three months from the date on which this order issues.

(D) Applicant shall file with the Commission a revised service agreement with Stroudsburg to cover the proposed additional delivery point.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. G–863

### FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 4, 1967)

On November 23, 1966, Mississippi River Transmission Corporation (Applicant) filed in Docket No. G–863, as supplemented on January 9, 1967, an application to amend the Commission's order issued December 8, 1947, 6 FPC 280, in said docket, as amended, by authorizing Applicant to transport and deliver up to 1,500 Mcf of natural gas per day, on a firm basis, to Shell Oil Company (Shell) for use in the latter's refinery at Wood River, Madison County, Illinois, all as more fully set forth in the application to amend, as supplemented, in this proceeding.

The order of December 8, 1947, among other things, authorized Mississippi River Fuel Corporation, Applicant's predecessor in interest, to transport and deliver natural gas on an interruptible basis to Shell for use at the Wood River refinery. Applicant now proposes to deliver gas on both an interruptible and firm basis to Shell. Applicant states that Shell proposes to utilize the firm gas to provide safe and economical control of the pressure in the Wood River refinery fuel gas system.

No new facilities are required for the proposed project.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on December 13, 1966 (31 F.R. 15712). No protest or petition to intervene has been filed in this proceeding.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 8, 1947 in Docket No. G–863, as amended, be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued December 8, 1947 in Docket No. G–863, as amended, is further amended by authorizing Applicant to transport and deliver up to a maximum of 1,500 Mcf of natural gas per day, on a firm basis, to Shell Oil Company for use in the latter's refinery at Wood River, Madison County, Illinois, all as hereinbefore described and as set forth in the application to amend, as supplemented.

(B) Applicant shall advise the Commission of the date of the commencement of the service authorized in paragraph (A) above within 10 days of such date.

(C) The authorization herein shall not entitle the industrial customer to whom firm deliveries are authorized to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(D) In all other respects said order, as amended, shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## VILLAGE OF SIMS, ILLINOIS AND TRUNKLINE GAS COMPANY, DOCKET NO. CP67-223

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 4, 1967)

On February 7, 1967, the Village of Sims, Illinois (Applicant) filed in Docket No. CP67-223 an application, as supplemented on February 21, 1967, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Respondent) to make physical connection of its facilities with the facilities of Applicant and to sell and deliver to Applicant up to 242 Mcf of natural gas per day for resale and distribution in the Village of Sims, and along the proposed supply line, Wayne County, Illinois, all as more fully set forth in the application.

Applicant proposes to construct a distribution system and approximately 4 miles of 2-inch supply and distribution pipeline extending eastwardly from Respondent's 26-inch transmission pipeline to the Village of Sims. Rural customers will be served by short line taps from the proposed supply lateral.

On February 16, 1967, the Board of Trustees of the Village of Sims issued Ordinance No. 108 approving the construction and operation of the proposed municipal gas distribution system.

Applicant's estimated third-year annual and peak day natural gas requirements are 22,050 Mcf and 242 Mcf, respectively. Respondent will sell and deliver said gas requirements to Applicant pursuant to Respondent's presently effective Rate Schedule SG-1 at approximately 35.6 cents per Mcf on a firm basis.

The total estimated cost of Applicant's proposed facilities is $120,000, including approximately $41,000 for the 2-inch supply lateral. Applicant proposes to finance the construction of its proposed facilities through the sale of 30-year gas revenue bonds, as authorized by the aforementioned Ordinance No. 108.

On March 8, 1967, Respondent filed a reply stating that it has no objection to rendering the natural gas service requested by Applicant if the Commission so authorizes.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

(1) Respondent, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(2) Applicant, Village of Sims, Illinois, is a municipal corporation incorporated under the laws of the State of Illinois and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said community.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 242 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 242 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN UNION GAS COMPANY, DOCKET NO. G-513; DEL NORTE NATURAL GAS COMPANY, CP66-104; EL PASO NATURAL GAS COMPANY AND EL PASO GAS TRANSPORTATION CORPORATION, CP66-105; DEL NORTE NATURAL GAS COMPANY, CP66-106

### ORDER GRANTING INTERVENTION, ESTABLISHING PROCEDURE AND FIXING A DATE FOR PREHEARING CONFERENCE

(Issued April 4, 1967)

On October 12, 1965, Del Norte Natural Gas Company (Del Norte) filed in Docket No. CP66-104 an application requesting an order of the Commission authorizing Del Norte to export natural gas from the United States to the Republic of Mexico (Mexico). In Docket No. CP66-106, filed the same day, Del Norte requested a permit authorizing the operation, maintenance and connection of facilities at the International Boundary between the United States and Mexico for the exportation of natural gas to Mexico. By these applications, Del Norte proposed to succeed to Southern Union Gas Company (Southern Union) in the exportation and sale of natural gas which was authorized by the Commission on January 2, 1945, in Docket No. G-513, 4 FPC 826.[1] Also on

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[1] Southern Union filed an application to vacate the related Presidential Permit and Authorization for exportation of gas to Mexico.

October 12, 1965, El Paso Natural Gas Company (Gas Company) and El Paso Gas Transportation Corporation (Transportation Corporation) filed in Docket No. CP66–105 a joint application for permission and approval to abandon the sale of natural gas to Southern Union and for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Del Norte. As a result of this new arrangement Del Norte would continue to supply natural gas to Juarez Gas Company, S.A. (Juarez Gas) in Ciudad Juarez, Chihuahua, Mexico, while also serving this area through a new distributor, Gas Natural de Juarez, S.A. (Juarez Natural).

Notice of these applications was issued on October 28, 1965 (30 F.R. 14022). Juarez Gas' petition to intervene in each docket was denied. On December 29, 1965, 34 FPC 1588, the Commission granted the requests made by Del Norte, Southern Union Gas Company, and Transportation Company in Docket Nos. G–513, CP66–104, CP66–105 and CP66–106. An application for rehearing and a stay by Juarez Gas was denied. However, Juarez Gas' petition for review to the United States Court of Appeals for the District of Columbia Circuit was granted and by order of March 14, 1967, the Court remanded the case to the Commission to reopen the case for further proceedings which would afford Juarez Gas and all proper parties "the opportunity to develop a complete record on all issues bearing on the public interest and public convenience and necessity."

In light of the Court's decision it is appropriate that we grant intervention to Juarez Gas and we shall do so.

In order to expedite the proceeding and to crystallize those matters upon which a hearing should be held we shall require each party to the proceeding to file a statement specifying issues in this case. Furthermore, we shall order that a prehearing conference be held thereafter to offer an opportunity to the parties to attempt to further limit the issues in this proceeding, to stipulate as to evidentiary matters, to resolve those issues which are capable of resolution on agreed evidence, and to use any other means possible to dispose of this proceeding in the most expeditious manner consistent with the requirements of due process and the Natural Gas Act. Following such conference, the Presiding Examiner shall set this matter for an early hearing and shall specify such other procedure as he deems necessary to promptly bring this matter to a proper conclusion.

*The Commission finds:*

(1) It is desirable to allow Juarez Gas Company, S.A. to intervene in these proceedings in order to show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

(2) The processing of this proceeding will be expedited by the filing of statements of proposed issues by the participants herein, and by the convening of a prehearing conference thereafter.

*The Commission orders:*

(A) Juarez Gas Company, S.A. is permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission.

(B) The parties to the proceeding shall submit in writing on or before April 10, 1967 a statement specifying the issues which they believe have been raised by the above-docketed applications. Said statement of issues shall be served on the other parties to the proceeding and the Commission staff in accordance with the Commission's Rules.

(C) A prehearing conference shall be held on April 17, 1967, at 10:00 a.m. (EST) before a presiding examiner of the Commission, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of discussion and limitation of issues, stipulation as to facts, the possible resolution of issues by stipulation, and such other means as may be available to expedite the proceeding.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP67-122; CAPITAN-CARRIZOZO NATURAL GAS ASSOCIATION, DOCKET NO. CP67-213; RUIDOSO NATURAL GAS COMPANY, INC., DOCKET NO. CP67-236

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ISSUING DECLARATIONS OF EXEMPTION

(Issued April 5, 1967)

On November 1, 1966, El Paso Natural Gas Company (El Paso) filed in Docket No. CP67-122 an application and supplement thereto on January 3, 1967, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, the acquisition by purchase from Capitan-Carrizozo Natural Gas Association (Association) and operation of certain facilities to be constructed by Association, and the sale and delivery of natural gas to Association for resale, all as more fully set forth in the application and supplement thereto.

El Paso and Association have undertaken a project which will result in natural gas service becoming available to the communities of Capitan, Carrizozo, Ruidoso, Ruidoso Downs and to other areas of Lincoln County, New Mexico. The proposed project contemplates the following: (1) the construction and operation by El Paso of a measuring and regulating station to be located adjacent to its Permian-San Juan crossover pipeline system in Lincoln County, New Mexico; (2) the construction by Association of approximately 44 miles of 4½-inch O.D. transmission pipeline extending southwesterly from El Paso's proposed measuring and regulating station along a route passing adjacent to the community of Capitan to a point of termination approximately 10 miles north of the community of Ruidoso, approximately 19 miles of 4½-inch O.D. transmission pipeline extending northwesterly from the community of Capitan to a point of termination at the community of Carrizozo, and approximately 3.5 miles of 4½-inch O.D. transmission pipeline extending southwesterly from the community of Capitan to a point of termination near Fort Stanton; (3) the construction by Association of distribution systems in the communities of Capitan and Carrizozo and other areas otherwise situated along its transmission system; (4) the acquisition by El Paso of the initial 7.9 miles segment of Association's proposed pipeline; (5) the sale and delivery of gas by El Paso to Association for resale and sale for resale; (6) the sale and delivery of natural gas by Association to Ruidoso Natural Gas Company, Inc. (Ruidoso Gas) for transportation to and resale and distribution in the communities of Ruidoso and Ruidoso Downs.

On August 12, 1966, Association in Case No. 821, was authorized by the New Mexico Public Service Commission to construct and operate natural gas lines and distribution systems in Lincoln County, New Mexico to provide gas service to the communities of Capitan, Carrizozo and environs.

On July 18, 1966, in Case No. 882, Ruidoso Gas was authorized by the New Mexico Public Service Commission to provide service to Ruidoso, Ruidoso Downs and environs.

The New Mexico Public Service Commission certified on November 2, 1966, that it was and is exercising rate regulatory jurisdiction over Association. Similar certification was made on February 10, 1967, with respect to Ruidoso Gas. Association and Ruidoso Gas have both received all necessary local authorizations.

The estimated natural gas requirements of the new market to be served are stated to be as follows:

| Community | Peak day | Third year in Mcf, annual volume |
|---|---|---|
| Capitan | 474 | 60,143 |
| Carrizozo | 501 | 53,196 |
| Ruidoso | 2,521 | 261,832 |
| Ruidoso Downs | 425 | 42,850 |
| Shrinkage | 36 | 10,300 |
| Total sales | 3,957 | 437,321 |

Such deliveries are proposed to be initiated by El Paso in accordance with and at rates contained in El Paso's Rate Schedules A-2, B-3, and D-3, FPC Gas Tariff, Original Volume No. 1.

The estimated cost of El Paso's proposed measuring and regulating station is $7,585 and the estimated cost of the pipeline segment proposed to be acquired by El Paso is $72,245 for a total of $79,830 which cost will be financed through current working funds.

The total estimated cost of the facilities proposed to be constructed by Association, less the cost of facilities to be acquired by El Paso, is $655,055. Ruidoso Gas estimates the cost of its facilities to be $837,000.

Pursuant to Section 1(c) of the Natural Gas Act, Capitan-Carrizozo Natural Gas Association (Association), a New Mexico corporation, filed on January 26, 1967 an application for exemption from the provisions of the Natural Gas Act for the facilities, transportation and sale for resale of natural gas within the State of New Mexico.

Association plans to maintain and operate in the State of New Mexico a pipeline having diameters of 4 inches and 2 inches and approximately 67 miles in length from Section 34, T. 3 S., R. 15 E., NMPM, along a route passing near the Village of Capitan, New Mexico, to a terminus in Section 15, T. 10 S., R. 13 E., NMPM, approximately 10 miles north of Ruidoso, New Mexico, together with distribution facilities to serve the communities of Capitan and Carrizozo. Association will buy natural gas from El Paso to be used in its facilities described above, which will be delivered at the juncture of El Paso's line with Association's lines described above. The natural gas so received by Association will be ultimately consumed within the State of New Mexico. Association's facilities will be located within the State of New Mexico.

Pursuant to Section 1(c) of the Natural Gas Act, Ruidoso Natural Gas Company, Inc. (Ruidoso Gas), a New Mexico corporation, filed on February 23, 1967 an application for exemption from the provisions of the Natural Gas Act for the facilities, transportation and sale of natural gas within the State of New Mexico. Ruidoso Gas plans to maintain and operate in the State of New Mexico a pipeline having diameters of 6 inches, 4 inches and 2 inches and approximately thirteen miles in length, beginning in Section 15, Township 10 South, Range 13 East, N.M.P.M., located approximately 10 miles north of Ruidoso and extending therefrom into Ruidoso and the Village of Ruidoso Downs in Lincoln County, New Mexico, together with distribution facilities to serve the two communities and other users of gas within Lincoln County. Ruidoso Gas will buy gas from Capitan-Carrizozo Natural Gas Association, at a point approximately 10 miles north of Ruidoso, New Mexico. All the natural gas so received by Ruidoso Gas will be ultimately consumed within the State of New Mexico and all of its facilities described herein will be located within the State of New Mexico.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application and supplement thereto, has been filed.

At a hearing held on March 30, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and supplement in Docket No. CP67-122 and applications in Docket Nos. CP67-213 and CP67-236 submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket No. G-242 (3 FPC 85).

(2) The proposed acquisition of facilities from Association, the construction and operation of facilities, and sale of natural gas for resale in interstate commerce, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed acquisition of facilities, construction and operation of facilities, and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, the acquisition and operation of facilities and sale for resale and delivery of natural gas to Capitan-Carrizozo Natural Gas Association, all as more fully described in the application and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by El Paso shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

(D) By reason of the proposed operations and services of Capitan-Carrizozo Natural Gas Association related in Docket No. CP67-213, and Ruidoso Natural Gas Company, Inc. in Docket No. CP67-236, and the certifications of the New Mexico Public Service Commission regarding its rate regulatory jurisdiction thereof, the Commission declares Capitan-Carrizozo Natural Gas Association and Ruidoso Natural Gas Company, Inc., and their facilities and services, exempt from the provisions of the Natural Gas Act and the orders, rules and regulations of the Federal Power Commission issued thereunder.

(E) El Paso shall file an executed service agreement with Association in accordance with the Commission's Regulations reflecting the terms and conditions of service to Association and the volumes of natural gas involved.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## KENTUCKY WEST VIRGINIA GAS COMPANY, DOCKET NO. CP67-199

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 5, 1967)

On January 12, 1967, Kentucky West Virginia Gas Company (Applicant) filed in Docket No. CP67-199 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Camp Branch-Rockhouse Creek delivery point, Letcher County, Kentucky, one of the four regular delivery points utilized for the delivery of natural gas to Inland Gas Company, Inc. (Inland) pursuant to an exchange agreement between the parties, all as more fully set forth in the application.

Specifically, Applicant proposes to abandon approximately 4,824 feet of 2-inch pipeline, metering facilities and appurtenances connecting 2 wells in Letcher County, Kentucky with Inland's facilities.

Both Applicant and Inland have four regular delivery points which are employed in their exchange of natural gas. In addition to the regular delivery points, each has an equalizing or balancing delivery point. Changed operations by Inland have resulted in increased takes by Inland from one of Applicant's delivery points resulting in an imbalance in exchange volumes which in turn, has required abnormal use of the equalizing or balancing delivery facilities.

Applicant proposes to achieve a more uniform exchange by eliminating its Camp Branch-Rockhouse Creek delivery point.

No abandonment of service is proposed and none will result from the authorization requested herein.

Inland has expressed its agreement with Applicant's proposal.

The original cost of the facilities proposed to be abandoned was $5,699.11. The estimated cost of removal is $1,290 and the salvage value of the facilities is estimated to be approximately $1,790.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on March 30, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Kentucky West Virginia Gas Company, a West Virginia corporation having its principal place of business in Ashland, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 4, 1944, in Docket No. G–272 (4 FPC 476).

(2) The facilities to be abandoned, as hereinbefore described, and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered and conditioned.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted upon the terms and conditions of this order.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## DONNELL DRILLING COMPANY, DOCKET NO. RI67–347

### ORDER ACCEPTING AMENDATORY AGREEMENT, PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE, AND REQUIRING THE FILING OF A RATE SCHEDULE QUALITY STATEMENT

(Issued April 6, 1967)

On March 9, 1967, Donnell Drilling Company (Donnell)[1] tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing.

*Description*: (1) Amendatory Agreement, dated October 26, 1957;[2] (2) Notice of Change, dated March 6, 1967.

*Purchaser and Producing Area*: El Paso Natural Gas Company (Levelland Field, Hockley County, Texas (Railroad District No. 8–A) (Permian Basin Area).

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[1] Address is: 1220 Denver Club Building, Denver, Colorado 80202.

[2] Amends contract to provide for continuation of delivery of casinghead gas to Levelland Plant; changes pressure base from 16.4 to 14.65 psia; sets forth new pricing schedule and deletes favored-nation provision from the contract; extends term of contract for 20 years from January 1, 1960, and amends tax provision to provide for partial reimbursement for all tax increases after January 1, 1950, instead of date of contract (October 1, 1949).

*Effective Date:* (1) April 10, 1967;[3] (2) April 10, 1967.[3]

*Rate Schedule Designation:* (1) Supplement No. 8 to Donnell's FPC Gas Rate Schedule No. 1; (2) Supplement No. 9 to Donnell's FPC Gas Rate Schedule No. 1.

*Amount of Annual Increase:* (2) $764.

*Effective Rate:* 10.0¢ per Mcf.

*Proposed Rate:* 18.0¢ per Mcf.[4]

Donnell, a producer-respondent in Opinion No. 468, proposes a renegotiated rate increase from 10.0¢ to 18.0¢ per Mcf, amounting to $764 annually, for a sale of residue gas derived from casinghead gas to El Paso Natural Gas Company from the Levelland Plant in the Permian Basin Area of Texas. The proposed increased rate exceeds the applicable area base rate of 14.5¢ per Mcf prescribed by Opinion Nos. 468 and 468–A, 34 FPC 159, 1068. Donnell has not submitted a quality statement establishing the applicable area ceiling rate for the subject sale. Under the circumstances, we believe that Donnell's proposed rate increase to 18.0¢ per Mcf should be suspended for five months from April 10, 1967, the date of expiration of the statutory notice, as hereinafter ordered.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

Concurrently with the filing of its notice of change in rate, Donnell submitted an amendatory agreement dated October 26, 1969, which deletes the favored-nation provisions in the contract and establishes a new periodic escalation pricing schedule, which provides the basis for the proposed rate increase. The amendatory agreement has been designated as Supplement No. 8 to Donnell's FPC Gas Rate Schedule No. 1. We believe that it would be in the public interest to accept for filing Donnell's aforementioned amendatory agreement to become effective on April 10, 1967, the date of expiration of the statutory notice, but not the proposed rate contained therein which will be suspended as indicated below.

Except for the stay of the moratorium in Opinion No. 468, Donnell's rate filing would be rejectable because the proposed rate is in excess of the applicable area ceiling determined in Opinion No. 468. If the moratorium is ultimately upheld upon judicial review, Donnell's rate increase will be rejected *ab initio*.

*The Commission finds:*

(1) Good cause has been shown for accepting for filing Donnell's proposed Amendatory Agreement dated October 26, 1959, designated as Supplement No. 8 to Donnell's FPC Gas Rate Schedule No. 1, and for permitting such supplement to become effective on April 10, 1967, the date of expiration of the statutory notice.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 9 to Donnell's FPC Gas Rate Schedule No. 1 be suspended and the use thereof deferred as hereinafter ordered.

*The Commission orders:*

(A) Donnell's Amendatory Agreement dated October 26, 1959, designated as Supplement No. 8 to Donnell's FPC Gas Rate Schedule No. 1, is accepted for filing and permitted to become effective on April 10, 1967.

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[3] The stated effective date is the first day after expiration of the statutory notice.

[4] Renegotiated rate increase.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 9 to Donnell's FPC Gas Rate Schedule No. 1.

(C) Pending a hearing and decision thereon, the above-designated rate supplement is hereby suspended and the use thereof deferred until September 10, 1967, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Donnell shall file with the Commission as a condition of this order within 30 days of the date of issuance of this order a statement setting forth either that the residue gas sold under the subject rate schedule accords with all pipeline quality standards established in Opinion Nos. 468 and 468-A, or in which respects the residue gas deviates from such standards; the agreed cost to the purchaser to bring it to the pipeline quality standards established there with respect to each quality deviation; any upward or downward Btu adjustment; and the resulting applicable area rate for the gas. Such statement shall be signed by both the seller and the purchaser. If the seller and the purchaser are unable to agree upon any or all of the particulars entering into the computation of the applicable area rate, the seller shall file the statement herein required which shall indicate the absence of agreement and supply the information required to compute the applicable area rate as well as the contentions of the parties with respect to the quality and amount of the adjustment for any item in dispute. The purchaser may file a separate statement setting forth its views within the period herein provided.

(F) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before May 24, 1967.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## INDEPENDENT PRODUCERS—TRANSFER OF PRODUCING ACREAGE—PROCEDURE, DOCKET NO. R-319

## ORDER NO. 340

### STATEMENT OF GENERAL POLICY

(Issued April 6, 1967)*

The Commission is aware that in those cases where an independent producer holding a certificate of public convenience and necessity transfers all or part of his producing acreage to another some questions exist as to whether Commission authority to abandon acreage is needed when the acreage is already dedicated to interstate commerce.

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*Published in the Federal Register on April 14, 1967 (32 F.R. 5990).

Where a *complete* succession of interest in properties takes place and a sale is continued by the assignee to the same purchaser, the Commission has held that no application to abandon service need be filed under section 7(b) of the Natural Gas Act since the successor in interest must apply for a certificate of public convenience and necessity to continue the sale because, in effect, there is no abandonment. *Kenneth McCullough, et al.*, Docket No. G-11701, *et al.*, issued March 7, 1958. Accordingly, no application to abandon should be filed by the predecessor in interest.

Where there is an assignment of *a part* of the producing acreage, and the successor is required to obtain Commission certificate authorization, the assignor need not apply to amend his existing certificate; the Commission automatically will amend the certificate of the assignor at the time it issues one to the assignee. However, a producer who transfers part of his acreage to another still must file the instruments of assignment as a supplement to his FPC rate schedule, as provided by §154.97 of the Commission's Regulations under the Natural Gas Act.

In those cases where the assigned acreage is not productive at the time of transfer, the assignor must obtain Commission authorization to delete such acreage, either pursuant to an application to amend his existing certificate to delete the assigned acreage or by filing an application under section 7(b) of the Natural Gas Act to abandon service from that acreage, unless, within one year from the date of the assignment the successor in interest files an application for certificate authorization to sell the gas for resale in interstate commerce.

*The Commission finds:*

(1) The statement issued herein concerns a matter of procedural policy which does not require notice or hearing under section 4(a) of the Administrative Procedure Act.

(2) It is appropriate and in the public interest in administering section 7 of the Natural Gas Act to set forth the Commission policy with respect to the matter here under consideration.

*The Commission*, acting under the authority of the Natural Gas Act, as amended, particularly sections 7(c), 7(e), and 16 thereof (52 Stat. 825, 830; 56 Stat. 83; 15 U.S.C. 717f(c), 717f(e), 717o), *orders:*

(A) Effective upon the issuance of this order, Part 2, General Policy and Interpretations, Chapter I, Title 18 of the Code of Federal Regulations as amended by adding a new §2.64 to read as follows:

§2.64 *Independent Producers—Transfer of Producing Acreage—Procedure*

(a) A natural gas producer who transfers all or part of his producing acreage to another does not have to apply for an amendment to his existing certificate of public convenience and necessity authorizing the sale if the new producer is required to obtain a certificate to sell gas from the property, *i.e.*, in those cases where gas is being produced from the assigned acreage or, if the acreage is non-productive at the time of transfer if the assignee initiates a sale for resale in interstate commerce. In those cases where the assigned acreage is not productive at the time of transfer, the assignor must obtain Commission authorization to delete such acreage, either pursuant to an application to amend his existing certificate to delete the assigned acreage or by filing an application under section 7(b) of the Natural Gas Act to abandon service from that acreage, unless, within one year from the date of the assignment the successor in interest files an application for certificate authorization to sell the gas for resale in interstate commerce.

(b) A producer who transfers part of his acreage to a successor must file the instruments of assignment as supplements to his FPC rate schedules, as required by §154.97 of this chapter. The successor producer must obtain certificate approval to continue the sale and must file the gas purchase contracts and instruments of assignment as his own rate schedules, as required by §154.92(d) of this chapter.

(B) Part 157 of the said Title 18 is amended by inserting, between the heading and paragraph (a) of §157.30, the following cross reference:

(§157.30 Abandonment of service.)

(See §2.64 of this chapter)

(a) * * *

(Secs. 7, 16, 52 Stat. 825, 830; 56 Stat. 83; 15 U.S.C. 717f(c), 717f(e), 717o).

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E-7337

### ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued April 10, 1967)

Community Public Service Company (Applicant) filed an application on February 13, 1967 seeking an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of short term unsecured promissory notes in the maximum principal amount of $8,000,000.

Applicant is incorporated under the laws of Texas and is engaged in the generation, purchase, transmission, distribution and sale of electric energy through 17 electric systems in Texas and 3 in New Mexico. These systems serve 101 communities in Texas and 12 communities in New Mexico.

The notes are to be issued to banks in Fort Worth or elsewhere in Texas and in New York City. They are to be issued from time to time prior to November 1, 1969, and each new or renewal note will mature within 120 days from date of issue. The notes are to bear interest at a rate in effect for such loans in Fort Worth or elsewhere in Texas or in New York.

The proceeds from the new notes will be used to reimburse the Applicant's treasury for construction expenditures which have been made and to furnish a portion of the funds for the Applicant's construction programs. These programs have estimated costs of $9,371,000 for 1967, $4,313,000 for 1968, and $4,518,000 for 1969. The 1967 program includes $3,220,000 for part of the cost of a 22 mw generating plant at Lordsburg, New Mexico, and $4,325,000 for distribution plant; the 1968 program includes $3,467,000 for distribution plant; and the 1969 program includes $3,789,000 for distribution plant.

Written notice of the application has been given to the New Mexico Public Service Commission and to the Texas Railroad Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on March 2, 1967 (32 F.R. 3480) stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before March 10, 1967, with the Federal Power Commission, Washington, D.C. 20426. No protests, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued April 24, 1963, *Community Public Service Company*, Docket No. E-7084 (29 FPC 829).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $8,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $8,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $8,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto being not later than November 1, 1969.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## IOWA ELECTRIC LIGHT AND POWER COMPANY, DOCKET NO. E-7342

### ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued April 10, 1967)

Iowa Electric Light and Power Company (Applicant), filed an application on February 27, 1967, seeking authority pursuant to Section 204 of the Federal Power Act to issue short-term Notes in an aggregate amount not to exceed $18,000,000.

Applicant is incorporated under the laws of the State of Iowa with its principal business office at Cedar Rapids, Iowa, and is engaged in the electric utility business in 51 counties in the State of Iowa.

The Notes to be issued by the Applicant will evidence loans from commercial banks and will have maturities not in excess of one year from their dates of issuance and in any event not later than December 31, 1968. The interest rate will be at the prime rate in effect at the time of the borrowing. The Commission, in an order issued on March 25, 1966, Docket No. E-7269, authorized Applicant to issue up to $18,000,000 in short-term notes, 35 FPC 414. The notes were to be issued to The First National Bank of Chicago, The Northern Trust Company of Chicago, and to other banks. They were to be issued either originally or upon renewal from time to time as the need for funds arose and they were to have maturity dates not in excess of one year from dates of issuance with all notes maturing on or before December 31, 1967. The notes were to bear interest at the prime rate in effect on dates of issuance. The Applicant issued notes from time to time and now has notes outstanding in the total amount of $6,400,000.

Under the application filed on February 27, 1967, the Applicant has requested authorization to issue the same amount of notes to the same banks on the same terms, with the exception that the final maturity date for the notes is to be extended from December 31, 1967 to December 31, 1968.

The proceeds from the issuance of these Notes will be used to furnish a portion of the funds for the Applicant's 1967 construction program which has an estimated cost of $18,637,500. The largest items in this program are $8,648,000 for completion of a 140 mw Prairie Creek Generating Unit, $4,755,000 for additions to electric distribution facilities, and $2,716,000 for additions to gas distribution facilities. The Applicant plans to redeem all of the notes out of the proceeds of the sale of long term securities to be marketed sometime in 1967, the exact nature, the date of issuance and sale of which have not as yet been determined.

Written notice of the application has been given to the Iowa State Commerce Commission, Minnesota Railroad and Warehouse Commission, the Colorado Public Utilities Commission, the Nebraska State Railway Commission and to the Governors of those states. Notice of the application was also published in the Federal Register on March 14, 1967 (32 F.R. 4036) stating that any person desiring to be heard or to make any protest with reference to the application, should on or before March 24, 1967 file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No protest or petition has been filed.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued August 29, 1966, Iowa Electric Light and Power Company, Docket No. E-7305 (36 FPC 543).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

*The Commission orders*

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $18,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto being not later than December 31, 1968.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## UNION TEXAS PETROLEUM, DOCKET NO. G–13221, ET AL. AND SOUTHWEST GAS PRODUCING COMPANY, ET AL., G–20046 AND CI66–210

### ORDER REJECTING OFFER OF SETTLEMENT

(Issued April 10, 1967)

On February 21, 1967, Southwest Gas Producing Company, Inc., *et al.* (Southwest)[1] submitted an Offer of Settlement in Docket No. G–20046 proposing to make refunds of the difference between the rate it received for gas sold to Transcontinental Gas Pipe Line Corporation from the North Starks Field, Calcasieu and Beauregard Parishes, South Louisiana, and 20.625¢, the rate which had been approved in producer settlements during the pendency of the *Union Texas Petroleum* proceeding.

On November 20, 1959, Southwest received an unconditioned temporary certificate to sell gas in Docket No. G–20046 at a rate of 22.05¢, inclusive of 2.05¢ tax reimbursement. The temporary certificate was amended, effective January 18, 1962, to reflect a contractual reduction in rate to 21.05¢. In *Union Texas Petroleum*, Opinion No. 435, 32 FPC 254, Southwest was granted a permanent certificate to make the proposed sale at a rate of 20.0¢, inclusive of tax reimbursement. In view of the depletion of its gas reserves, sales and deliveries from the North Starks Field ceased prior to December 1964 and on October 28, 1965 in Docket No. CI66–210 the Commission granted authorization for the abandonment of the sale.

Southwest now proposes to refund all amounts collected above 20.625¢ from January 1, 1960 until deliveries ceased in 1964, except those amounts above 20.625¢ paid to royalty interests. Southwest alleges that the question of whether refunds should be required is still pending in the courts, that in failing to make a settlement offer during the pendency of the *Union Texas Petroleum* proceeding it had relied upon prior Commission decisions and custom in not requiring refunds where there was an unconditioned temporary certificate, that the sale has already ceased and that this is, consequently, a unique situation which would not be of a precedential nature, and that it has sustained a substantial loss in the North Starks Field.

On February 28, March 3 and March 16, 1967, Brooklyn Union Gas Company, The Philadelphia Gas Works Division of the United Gas Improvement Company, Public Service Electric and Gas Company, and Long Island Lighting Company filed letters with the Commission in opposition to Southwest's Offer of Settlement.

Since the Commission has already decided the proceeding on its merits, *Union Texas Petroleum*, *supra*, and there is opposition to the settlement herein,[2] we shall reject the Offer of Settlement.

*The Commission orders:*

The Offer of Settlement submitted by Southwest Gas Producing Company, Inc., *et al.*, on February 21, 1967, is rejected.

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[1] Southwest filed on behalf of Ashland Oil & Refining Company, Midwest Oil Corporation and Monla Gas Company, Inc.

[2] *Cf. Union Texas Petroleum, et al., Sun Oil Company,* CI60–75, order issued December 23, 1963; *Continental Oil Company,* 30 FPC 1551; *Freeport Oil Company,* Docket No. CI61–144, order issued September 10, 1964; *Pan American Petroleum Corporation,* Docket No. G–16946, order issued February 14, 1967, 37 FPC 314.

Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP61-143; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP61-149; ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP61-163

### ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 11, 1967)

On February 23, February 20, and February 8, 1967, Colorado Interstate Gas Company (Colorado) in Docket No. CP61-143, Natural Gas Pipeline Company of America (Natural) in Docket No. CP61-149 and Arkansas Louisiana Gas Company (Arkansas Louisiana) in Docket No. CP61-163, respectively, filed petitions to amend the Commission's order issued January 3, 1963, in Docket No. CP61-143, *et al.*, 29 FPC 8, as amended on December 30, 1963, 30 FPC 1615, June 2, 1964, 31 FPC 1333, May 25, 1965, 33 FPC 1065, and September 12, 1966, 36 FPC 613. By the instant filing, Petitioners request that the subject order, as amended, be amended further so as to extend from May 1, 1967 to May 1, 1968, the authorized duration of the short-term interruptible sale of natural gas by Colorado to Arkansas Louisiana and the related exchange of natural gas among Colorado, Arkansas Louisiana and Natural, all as more fully set forth in the respective petitions to amend.

The subject order, as amended, authorized Colorado to sell pursuant to its Rate Schedule X-12 up to 35,000 Mcf of natural gas daily to Arkansas Louisiana from the Mocane Laverne area in the Oklahoma Panhandle on a short-term interruptible basis and the exchange of equivalent volumes of natural gas between Colorado and Natural in order to effect said sale. Deliveries are made to Arkansas Louisiana by Natural pursuant to Natural's Rate Schedule X-8 at a point in Grady County, Oklahoma for the account of Colorado, and equivalent volumes are delivered by Colorado to Natural pursuant to Colorado's Rate Schedule X-14 at an interconnection between their two systems in Beaver County, Oklahoma. In accordance with Colorado's Rate Schedule X-12, the subject sale of gas to Arkansas Louisiana is made at a rate of 18 cents per Mcf.

The volumetric limitations of 35,000 Mcf, 18,000 Mcf and 10,000 Mcf for maximum day, average day and minimum day, respectively, will remain unchanged. Said limitations were authorized by the May 25, 1965 amendment to the subject order.

On March 7, 1967, in accordance with letter agreements between the parties, Natural filed a revision to its Rate Schedule X-8 extending the term of the subject sale and exchange of gas through April 30, 1968. Colorado states that it will timely file changes to its Rate Schedules X-12 and X-14 in order to extend the term of the sale and exchange to May 1, 1968.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in Docket No. CP61-143, *et al.* on January 3, 1963, and amended on December 30, 1963, June 2, 1964, May 25, 1965, and September 12, 1966, be amended further as hereinafter ordered and conditioned.

*The Commission orders:*

**(A) The Commission's order issued in Docket No. CP61-143, *et al.* on January 3, 1963, and amended on December 30, 1963, June 2, 1964, May 25, 1965, and September 12, 1966, is amended further so as to extend from May 1, 1967 to May 1, 1968, the authorized duration of the short-term interruptible sale of natural gas by Colorado Interstate Gas Company to Arkansas Louisiana Gas Company and the related exchange of equivalent volumes of natural gas between Colorado Interstate Gas Company and Natural Gas Pipeline Company of America, as hereinbefore set forth and as more fully set forth in the respective petitions to amend filed in this proceeding.**

**(B) Natural Gas Pipeline Company of America's revised Rate Schedule X-8 is accepted for filing, effective as of the date of this order.**

**(C) The authorization granted by paragraph (A) above is conditioned upon the filing by Colorado Interstate Gas Company of revised tariff sheets to its Rate Schedules X-12 and X-14 in accordance with the Commission's Regulations under the Natural Gas Act.**

**(D) In all other respects the subject order, as amended, shall remain in full force and effect.**

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Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. G-8934

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 11, 1967)

On December 27, 1966, El Paso Natural Gas Company (Petitioner) filed in Docket No. G-8934 a petition to amend the order of the Commission issued in said docket on November 25, 1955 (Opinion No. 289, 14 FPC 157) so as to authorize Petitioner to sell and deliver natural gas to an existing distribution customer, Washington Water Power Company (Water Power) for resale to Potlatch Forests, Inc. (Potlatch), in lieu of the presently authorized transportation and delivery to Potlatch on a direct interruptible basis.

Petitioner will continue to use the same delivery point to Potlatch, but will deliver the natural gas for the account of Water Power for resale to Potlatch, under Petitioner's DL-1 Rate Schedule, instead of making the present direct delivery on an interruptible basis to Potlatch.

Petitioner proposes to increase its firm daily deliveries to Water Power in the Lewiston area from 68,500 therms to 295,000 therms, of which Water Power will sell up to 200,000 therms daily to Potlatch.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on January 18, 1967 (32 F.R. 586). No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

*The Commission finds:*

**(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission order issued November 25, 1955 in Docket No. G-8934 be further amended as hereinafter ordered.**

(2) It is appropriate in the administration of the Natural Gas Act and in the public interest that revised Exhibits A and B to the firm service agreement of September 26, 1961 with Water Power be accepted for filing effective on the date of issuance of this order.

*The Commission orders:*

(A) The Commission's order issued November 25, 1955 in Docket No. G-8934 as amended is further amended so as to authorize Petitioner (1) to sell and deliver natural gas to Water Power for resale to Potlatch, and to operate the facilities necessary therefor, as requested by Petitioner in its said petition to amend and (2) to terminate the direct sale and delivery of natural gas to Potlatch.

(B) Petitioner's revised Exhibits A and B to its firm service agreement of September 26, 1961 with Water Power is accepted for filing effective on the date of issuance of this order.

(C) The amendment authorized by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in Section 157.20 of such Regulations.

(D) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-99

### FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 11, 1967)

On January 30, 1967, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP64-99 a petition to amend further the order of the Commission issued in said docket on February 18, 1964, 31 FPC 422, as amended on August 7, 1964, October 21, 1964, December 15, 1964, 32 FPC 539, 1152, 1424, June 2, 1965, 33 FPC 1160, and June 27, 1966, 35 FPC 1087, by authorizing Petitioner to continue to participate, as to its one-third interest, in certain additional testing activities of the Jackson Prairie Storage Unit, including an increase in the volumetric limitation on the inventory of gas in said storage reservoir from 3,000,000 Mcf (14.73 psia) to 7,500,000 Mcf (14.73 psia), for a period continuing through December 31, 1968, or until divestiture of Petitioner's Northwest Division System, whichever first occurs, all as more fully set forth in the subject petition to amend in this proceeding.

The order of February 18, 1964, as amended, authorized Petitioner to construct and operate certain facilities; to sell and deliver natural gas to Washington Natural Gas Company (Washington Natural) and Washington Water Power Company (Water Power) and, with respect to Petitioner's one-third interest therein, to share in the cost of facilities to be constructed and operated by Water Power, all solely for the purpose of testing the Jackson Prairie Storage Unit, Lewis County, Washington. The order, as amended, also limited gas inventory in the storage reservoir to 3,000,000 Mcf (14.73 psia). The authorization, as amended, is for a period ending June 30, 1967, or until divestiture of Petitioner's Northwest Division System, whichever first occurs.

Petitioner, Washington Natural, and Water Power, the latter continuing as Storage Unit Operator, have agreed to increase their individual commitments from $2,000,000 to $3,600,000 to finance the proposed expanded testing program. The proposed continued testing will require (a) the drilling of 18 new wells, (b) pipeline facilities necessary for gas injection-withdrawal and water withdrawal and disposal, (c) an additional 1,100 horsepower compressor, and (d) a portable type dehydrator unit. The estimated cost for the extended testing program, inclusive of the amount of $5,683,600 jointly expended through December 31, 1966, is $10,789,350.

Petitioner states that the continued testing of the storage field is required to further test the pressure performance and water encroachment characteristics and feasibility of storage utilization of Zones 2A and 2B–C of the storage area.

Due notice of the filing of the petition to amend further and opportunity for hearing thereon has been given by publication in the Federal Register on February 15, 1967 (32 F.R. 2913). No protest or petition to intervene has been filed in this proceeding.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 18, 1964, in Docket No. CP64–99, as amended, be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued February 18, 1964, in Docket No. CP64–99, as amended, is further amended by authorizing:

(1) With respect to Petitioner as an undivided one-third interest participant, the extension of the period for joint testing of the Jackson Prairie Storage Reservoir through December 31, 1968, or until divestiture of Petitioner's Northwest Division System, whichever first occurs;

(2) The increase in the volumetric limitation on the inventory of gas in the storage reservoir from 3,000,000 Mcf (14.73 psia) to 7,500,000 Mcf (14.73 psia); and

(3) The expansion of the testing facilities and activities of the Jackson Prairie Storage Reservoir as proposed with Petitioner increasing its one-third commitment to $3,600,000.

(B) In all other respects said order, as amended, shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## HOME GAS COMPANY, DOCKET NO. CP67–222

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued April 11, 1967)

On February 6, 1967, Home Gas Company (Applicant) filed in Docket No. CP67–222 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities replacing facilities proposed to be abandoned and for permission and approval to abandon certain other facilities, all in Allegany and Steuben Counties, New York, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes the following projects:

(a) The abandonment of its 680 horsepower Wellsville Compressor Station in Allegany County. Applicant states that because of the storage capabilities and deliverabilities of its Greenwood, Gilbert and Dundee Storage Fields and since the completion of its Line A–5, the Wellsville Station is no longer required for the operation of its system, and

(b) The construction and operation of two segments of 12-inch pipeline, totalling 8.5 miles, replacing two segments of Applicant's parallel 6-inch lines A–1, A–2, A–3 and A–4 which lines transverse, in total, approximately 8.2 miles and which aggregate about 33 miles of pipe, in the Towns of Greenwood and Jasper in Steuben County. Applicant states that the replacement is part of its long-range plans for eventual replacement of all of its A lines, some of which were laid many years ago. Except for those portions of the old lines which must be removed because of new road construction, the A lines to be replaced will be abandoned in place.

The total estimated cost of the proposed new facilities is $385,000, which cost will be financed through the issuance and sale of promissory notes and/or common stock to Applicant's parent company, The Columbia Gas System, Inc. The application indicates a net salvage from the retirements of $2,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of application has been filed.

At a hearing held on April 6, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Home Gas Company, a New York corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 5, 1943, in Docket No. G–345 (3 FPC 895).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Home Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by December 1, 1967.

(D) Permission for and approval of the abandonment by Applicant of facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

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Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## LAWRENCEBURG GAS TRANSMISSION CORPORATION, DOCKET NO. CP67-205

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 11, 1967)

On January 23, 1967, Lawrenceburg Gas Transmission Corporation (Applicant) filed in Docket No. CP67-205 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase from 11,000 Mcf to 11,500 Mcf in contract demand service to Applicant's affiliated customer, Lawrenceburg Gas Company (Lawrenceburg), all as more fully set forth in the application in this proceeding.

Lawrenceburg will utilize the proposed increased deliveries to meet normal growth of its service area and to initiate service to the Town of Rising Sun, Indiana. Applicant proposes to sell, on an interruptible basis, and under its FPC Gas Rate Schedule EX-1, any portion of the proposed increased volumes not taken by Lawrenceburg to Applicant's parent, The Cincinnati Gas & Electric Company.*

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*By Commission order issued August 17, 1965 in Docket No. CP65-186, 34 FPC 527, Applicant was authorized to make interruptible sales for resale to Cincinnati.

The proposed increased sales to Lawrenceburg will be made pursuant to Applicant's FPC Gas Rate Schedule CDS-1.

No new facilities will be necessary to render the proposed increased service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 6, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Lawrenceburg Gas Transmission Corporation, an Indiana corporation having its principal place of business in Lawrenceburg, Indiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 17, 1965, in Docket No. CP65-186 (34 FPC 527).

(2) The proposed sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, is to be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed sale by Applicant is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sale of natural gas by Applicant is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (e) and (f) of Section 157.20 of such Regulations.

(6) Applicant should file with the Commission a revised service agreement with Lawrenceburg in accordance with Part 154 of the Commission's Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Lawrenceburg Gas Transmission Corporation, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (e) and (f) of Section 157.20 of such Regulations.

(C) The sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

(D) Applicant shall file with the Commission a revised service agreement with Lawrenceburg in accordance with Part 154 of the Commission's Regulations.

**Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.**

## MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP67-229

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 11, 1967)

On February 13, 1967, Mississippi River Transmission Corporation (Applicant) filed in Docket No. CP67-229 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Iron County, Missouri, to enable it to transport and sell natural gas on an interruptible basis to Pilot Knob Pellet Company (PKP) and American Smelting and Refining Company (ASR), all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 20 miles of 6⅝-inch pipeline and related facilities extending from Applicant's existing Main Line Nos. 1 and 2 to PKP's plant, Pilot Knob, Iron County, Missouri, and approximately 10 miles of 4½-inch pipeline and related facilities extending from the proposed 6⅝-inch pipeline to ASR's plant, Glover, Iron County, Missouri.

The PKP plant will produce iron pellets and will use natural gas primarily for process fuel in its pelletizing furnace. The ASR plant will smelt lead ores mined in the adjoining Reynolds County and also ores brought from other areas. Natural gas will be used primarily in its smelting furnaces.

PKP and ASR have executed industrial gas sales contracts with Applicant dated January 14, 1967, and December 13, 1966, respectively. These contracts call for the daily delivery of gas on an interruptible basis of up to 2,100 Mcf and 1,250 Mcf with maximum annual deliveries of 500,000 Mcf and 230,000 Mcf, respectively. Said volumes of natural gas will be sold by Applicant to PKP and ASR at the rate of 48 cents per Mcf, adjusted for Btu content.

The total estimated cost of Applicant's proposed facilities is $792,000, which will be financed from cash on hand.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on April 6, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to

**the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.**

**(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.**

**(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.**

**(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in Section 155.1 and paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.**

***The Commission orders:***

**(A) A certificate of public convenience and necessity is issued to Applicant, Mississippi River Transmission Corporation, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.**

**(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in Section 155.1 and paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.**

**(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within one year from the date on which this order issues.**

**(D) The certificate issued hereby is granted on the express condition that the interruptible gas service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.**

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**Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.**

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-241

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

**(Issued April 11, 1967)**

**On February 27, 1967, Northern Natural Gas Company (Applicant), filed in Docket No. CP67-241 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport and sell natural gas to Interstate Power Company (Interstate) for resale and delivery on a direct firm industrial basis to a plant of Libby-Owens-Ford Glass Plant at Mason City, Iowa, all as more fully set forth in the application.**

Interstate has requested Applicant to allocate 400 Mcf of Interstate's present contract demand for a service to commence on May 1, 1967, to a new industrial consumer, Libby-Owens-Ford, now building a new processing plant at Mason City, Cerro Gordo County, Iowa. The requested service to Interstate will be rendered under Applicant's FPC Rate Schedule CD-3. Interstate presently has a total contract demand allocation of 33,430 Mcf, of which 18,963 Mcf has been earmarked for service in the communities of Mason City and Clear Lake, Iowa.

No new facilities will be required for the proposed new service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 6, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The proposed transportation and sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed transportation and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e) and (f) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the transportation and sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e) and (f) of Section 157.20 of such Regulations.

(C) The transportation and sale of natural gas authorized by paragraph (A) above shall be commenced as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## GAS MARKETING, INC., DOCKET NO. CP63-60

### ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 12, 1967)

On January 10, 1967, Gas Marketing, Inc. (Petitioner) filed in Docket No. CP63-60 a petition to amend the order issued in said docket on August 28, 1963, [unreported] which order authorized the construction and operation of certain natural gas facilities by Petitioner for the purchase of casinghead gas from two producers in the Fruit Field, Kiowa County, Kansas, and the resale thereof to Panhandle Eastern Pipe Line Company (Panhandle). By the instant filing, Petitioner requests that the subject order be amended so as to authorize the construction and operation of additional facilities for the purchase of casinghead gas from J. Mark Richardson and Rock Island Oil & Refining Co., Inc., operators of leaseholds in the Fruit Field, and the resale of that additional gas to Panhandle at 15 cents per Mcf pursuant to the existing agreement between the parties on file with the Commission as Petitioner's FPC Gas Rate Schedule No. 1, all as more fully set forth in the petition to amend.

In order to attach the additional reserves, Petitioner proposes to construct a total of approximately 1.4 miles of 3- and 5-inch pipeline and related metering facilities.

The additional gas will be sold by the aforementioned producers to Petitioner in accordance with a percentage-type contract as defined in Section 154.91(e) of the Regulations under the Natural Gas Act.

The total estimated cost of Petitioner's proposed facilities is $7,328.00, which will be financed from cash on hand.

On February 15, 1967, Petitioner was issued a temporary certificate of public convenience and necessity authorizing the construction and operation of the facilities and the service proposed to be rendered therefrom, as hereinbefore described and as more fully described in the petition to amend.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued on August 28, 1963, in Docket No. CP63-60 be amended as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on August 28, 1963, in Docket No. CP63-60 is amended by authorizing Petitioners to construct and operate additional natural gas facilities for the purchase of casinghead gas from J. Mark Richardson and Rock Island Oil & Refining Co., Inc., operators in the Fruit Field, Kiowa County, Kansas, and to resell the additional gas to Panhandle Eastern Pipe Line Company, as hereinbefore described and as more fully set forth in the petition to amend.

(B) The authorization granted by paragraph (A) above is conditioned upon Petitioner's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

(C) In all other respects the certificate of public convenience and necessity issued in the instant docket on August 28, 1963, shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## IOWA-ILLINOIS GAS AND ELECTRIC COMPANY AND IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7333

### ORDER AUTHORIZING SALE AND ACQUISITION OF FACILITIES

(Issued April 13, 1967)

Iowa-Illinois Gas and Electric Company (Iowa-Illinois) filed an application on January 19, 1967, and Iowa Southern Utilities Company (Iowa Southern) filed a certificate of concurrence on January 23, 1967, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the sale by Iowa-Illinois and the acquisition by Iowa Southern of a portion of a 161-kv, wood pole, transmission line.

Iowa-Illinois is incorporated under the laws of the State of Illinois and is authorized to carry on business in the States of Illinois and Iowa with its principal business office in Davenport, Iowa and is engaged in the electric utility business in Rock Island, Henry, and Whiteside Counties in the State of Illinois and in Scott, Johnson, Linn, Webster, and Wapello Counties in the State of Iowa.

Iowa Southern is incorporated under the laws of Delaware with its principal business office at Centerville, Iowa and is engaged in the electric utility business along and across the southerly counties in Iowa.

Iowa-Illinois proposes to sell to Iowa Southern a portion of its 161-kv transmission line which extends from Milan, Illinois to Fort Madison, Iowa. The portion of the line to be sold extends from a point in Des Moines County, Iowa, southerly to a point in Lee County, Iowa, at which the line connects with the facilities of Union Electric Company and its Viele Substation, being approximately 28.19 miles in length. The consideration for the sale of this line is to be in the amount of $721,497.

Iowa-Illinois and Iowa Southern along with Northern States Power Company, Interstate Power Company, Iowa Electric Light and Power Company, Iowa Public Service Company and Union Electric entered into a Facilities Agreement on March 30, 1964, to construct a 520 mile, 345-kv transmission line from Northern States' facilities near Minneapolis to Union Electric's facilities near St. Louis and a 345-kv substation at Hills, Iowa. Under the terms of the Agreement, Northern States will build about 110 miles of the line, Interstate Power will build about 55 miles, Iowa Electric Light will build about 25 miles, Iowa Public Service will build about 17 miles, Iowa-Illinois will build about 60 miles and Union Electric about 253 miles.

Iowa Southern is located some distance from the proposed 345-kv transmission line and substation and has, therefore, entered into the proposed agreement with Iowa-Illinois to purchase a portion of its 161-kv transmission line in lieu of its own proportionate contribution toward the 345-kv transmission line and substation as herein described.

The consideration as heretofore stated was determined by a calculation of the obligation which would have been the burden of Iowa Southern to contribute to the construction of the 345-kv transmission line and Hills Substation based on recent estimates as applied to their proportionate contribution to the construction.

Upon the conclusion of this transaction Iowa-Illinois will have transferred to Iowa Southern a portion of its 161-kv line which continues to be of substantial and appropriate use to Iowa-Illinois and in addition will have, with the consideration negotiated between the parties, applied said sum to the construction of the portion of the Hills Substation facilities and the 345-kv transmission line which would otherwise have been the obligation of Iowa Southern to contribute. The effect of this transaction is to invest Iowa Southern with title to a portion of the 161-kv transmission line, located in its service area and outside Iowa Illinois's service area, to which Iowa Southern will interconnect its new Burlington generating station with facilities to be constructed near the southerly end of the 28.19-mile segment to be transferred, and proposes further to construct a 161-kv transmission line extending westerly toward its presently existing transmission line near Fairfield, Iowa.

The portion of the line to be transferred has a depreciated original cost of $674,340 and the consideration therefor will be $721,497. On the books of Iowa-Illinois, a gross gain of $47,157 ($721,497–$674,340) will be recorded by a credit of $12,496 to Account 236, Taxes Accrued, for taxes in connection with the gain, and by a credit of $34,661 to Account 421, Miscellaneous Nonoperating Income, for the net amount of the gain. An acquisition adjustment of $47,157 will be created on the books of Iowa Southern and this will be eliminated by a debit to Account 435, Miscellaneous Debits to Surplus.

Written notice of the application has been given to the Iowa State Commerce Commission and to the Illinois Commerce Commission and to the Governor of each of those states. Notice has also been given by publication in the Federal Register on February 3, 1967 (32 F.R. 2401), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before February 17, 1967, with the Federal Power Commission, Washington D.C. 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Iowa-Illinois, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the State of Illinois and consumed in the State of Iowa, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or solely for the transmission of electric energy consumed wholly by the transmitter. Iowa-Illinois, therefore, is a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) Iowa Southern, a corporation is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 31, 1961, *Iowa Southern Utilities Company, et al.*, Docket No. E-6974 (25 FPC 1063).

(3) By the proposed transaction, Iowa Southern will merge or consolidate its facilities subject to the jurisdiction of the Commission with part of those of Iowa-Illinois, another person within the meaning and subject to the requirements of Section 203 of the Federal Power Act and Iowa-Illinois will dispose of facilities subject to the Commission's jurisdiction within the meaning of Section 203 of the Federal Power Act.

(4) The proposed transaction as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(5) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed transaction referred to above and as described in the application is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Iowa-Illinois and Iowa Southern shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. RP64-38

### ORDER APPROVING STIPULATION AND AGREEMENT REQUIRING RATE REDUCTIONS AND REFUNDS, ACCEPTING REVISED TARIFF SHEETS FOR FILING AND WAIVING NOTICE REQUIREMENTS AS TO EFFECTIVE DATE

(Issued April 13, 1967)

On February 14, 1967, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) submitted a Stipulation and Agreement proposing, *inter alia*, refunds and rate reductions to be made in compliance with the Commission's order issued June 23, 1964 [1] in this proceeding. The proposed refunds aggregate more than $8,000,000 as summarized below. Concurrently, Michigan Wisconsin tendered revised tariff sheets [2] reflecting rate decreases which will reduce the annual jurisdictional revenues by $2,072,000 based on estimated 1967 sales. Michigan Wisconsin requests waiver of the notice requirements to permit the revised tariff sheets to be effective as of March 1, 1967. The rate reductions and refunds result primarily from the flow through of benefits of liberalized depreciation.

The agreement approved by the aforementioned Commission order issued June 23, 1964, provided, among other things, that Michigan Wisconsin would make further rate reductions as of October 1, 1965, should the court affirm Commission's Opinion No. 417 [3] and it was no longer subject to judicial review. That agreement also provided that Michigan Wisconsin would be entitled to reflect in its filing offsetting changes in its cost-of-service, on an annualized basis, using the 12-month period ending October 1, 1965, as the test period. Michigan Wisconsin submitted the instant proposal following conferences with our Staff. The terms of the instant proposal may be summarized in principal part as follows:

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[1] 31 FPC 1579.

[2] Ninth Revised Sheet No. 6, Seventh Revised Sheet No. 7, First Revised Sheets Nos. 9B and 9C, Seventh Revised Sheet No. 10, and First Revised Sheets Nos. 14A and 14D.

[3] 31 FPC 208 (1964), affirmed 359 F. 2d 318 (CA5-1966), cert. den., 385 U.S. 847, reh. den., 385 U.S. 964.

(1) For the period October 1, 1965 through August 31, 1966, Michigan Wisconsin will refund to its customers a total of $548,000 per month (approximately $6,028,000) plus interest at 7 percent per annum to be allocated to each customer on the basis of actual volumes purchased.

(2) For the period September 1, 1966 through February 28, 1967, Michigan Wisconsin will refund an amount estimated at approximately $2,015,000 plus interest. This is an amount equivalent to 8.0 cents per Mcf of billing demand under Rate Schedules ACQ–1 and MDQ–1; 0.3 cents per Mcf of gas delivered under Rate Schedules ACQ–1, MDQ–1, SDOS–1 and AOS–1; and 0.6 cents per Mcf for each Mcf delivered under Rate Schedule SGS–1.

(3) Rate levels proposed to be effective as of March 1, 1967 are as follows: Rate Schedule ACQ–1, Demand $2.96, Commodity 27.45¢; Section 7.1 adjustment 9.7¢; Rate Schedule MDQ–1, Demand $2.80, Commodity 27.45¢, Section 6.1 adjustment 9.2¢; Rate Schedule SGS–1, 44.25¢; and Rate Schedules SDOS–1 and AOS–1, 27.45¢.

The rates proposed to be made effective March 1, 1967, reflect an increase in Federal income tax in the form of a 6 percent surcharge thereby increasing the effective corporate tax rate from 48% to 50.88%. If an increase in the Federal income tax rate has not been enacted or become effective on or before January 1, 1968, Michigan Wisconsin will further reduce jurisdictional rates effective January 1, 1968, as set out in the Stipulation, and will refund the amounts accumulated during the period from March 1, 1967, plus interest at 7 percent. Michigan Wisconsin will also further reduce its rates and make refunds in event its purchase gas cost decreases below that set out in the Stipulation.

The Stipulation provides that Michigan Wisconsin shall also discontinue the use of deferred tax accounting and adopt "flow-through" accounting with respect to the reduction in income tax resulting from the use of liberalized depreciation. Michigan Wisconsin requests waiver of the requirements of Paragraph A of Account 282. It proposes to comply with the other requirements of that Account on a vintage year basis with respect to facilities constructed prior to January 1, 1966, until the amounts on the books in Account 282 are exhausted. By letter dated March 30, 1967, Michigan Wisconsin stated that it recognized that approval of the instant proposal would be without prejudice to the outcome of the pending proceedings in Docket No. R–264 and to the position that the Staff, Michigan Wisconsin or any other party may take in any future proceeding with respect to the disposition of the balance in Account 282.

Michigan Wisconsin reserves the right to take advantage of any changes which may occur with respect to the tax aspects of liberalized depreciation whether through legislation, court decision, change in Commission policy, or otherwise.

After due notice served upon Michigan Wisconsin's customers and interested State Commissions and published in the Federal Register (32 F.R. 3480), no objections or protests were received. Our review of the proposed Stipulation and Agreement, of the documents and data submitted in support thereof, including the cost of service utilized for such purposes, indicates that Michigan Wisconsin has complied with the requirements of our order issued herein on June 23, 1964. The proposed Stipulation and Agreement is proper and in the public interest.

*The Commission finds:*

(1) The proposal filed herein on February 14, 1967, by Michigan Wisconsin is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective subject to the terms and conditions herein provided and ordered.

(2) Good cause exists for the Commission to waive its applicable Regulations under the Natural Gas Act in order that the tariff sheets filed on February 14, 1967, may become effective as of March 1, 1967, as proposed.

*The Commission orders:*

(A) The proposal filed herein by Michigan Wisconsin on February 14, 1967, is hereby approved and made effective subject to the following terms and conditions.

(B) The revised tariff sheets filed herein on February 14, 1967, as hereinbefore designated, are hereby accepted for filing and the notice requirements set out in Section 154.22 of the Commission's Regulations are hereby waived to permit said revised tariff sheets to be effective March 1, 1967.

(C) Within 30 days from the date of issuance of this order, Michigan Wisconsin shall make the refunds to its customers as required by Article 1 (A) and (B) of the proposal.

(D) For the period October 1, 1965 through August 31, 1966, Michigan Wisconsin shall refund to its customers a total of $548,000 per month, to be allocated to each customer on the basis of actual Mcf deliveries, and for the period September 1, 1966 through February 28, 1967, Michigan Wisconsin shall refund an amount equivalent to 8 cents per Mcf of billing demand under Rate Schedules ACQ-1 and MDQ-1; 0.3 cents per Mcf delivered under Section 3 of Rate Schedules ACQ-1, MDQ-1, SDOS-1 and AOS-1; and 0.6 cents per Mcf delivered under Section 3 of Rate Schedule SGS-1.

(E) Michigan Wisconsin shall pay interest on the refunds required by paragraph (D) in accordance with the Commission's order issued on June 23, 1964, in this proceeding (31 FPC 1579, 1581).

(F) Within 20 days of making the refunds required by the proposal and this order, Michigan Wisconsin shall report to the Commission in writing and under oath, the amounts of the refunds made to each customer together with a computation showing the manner in which such refunds were determined and shall file with the Commission releases from its customers showing receipt of the appropriate amounts. Concurrently therewith, Michigan Wisconsin shall serve a copy of the report upon its customers and interested State Commissions.

(G) Within 20 days from any date upon which Michigan Wisconsin makes further refunds as required by the Stipulation and Agreement herein approved, Michigan Wisconsin shall file with the Commission reports thereof and releases signed by its customers to whom payments were made. Copies of such reports shall be served upon interested State Commissions and all customers.

(H) Michigan Wisconsin's request as to waiver of the requirements of Paragraph (A) of Account 282 is hereby granted as requested.

(I) The accounting treatment of Account 282 approved by this order is without prejudice to any findings and orders which may be issued in Docket No. R-264 with respect to the disposition of funds in Account No. 282 to the position that the Staff, Michigan Wisconsin, or any other party may take in any future proceeding with respect to the disposition of the balance in Account 282.

(J) This order, except as herein specifically set forth, shall not be construed to change or otherwise affect the existing obligations of Michigan Wisconsin to make rate reductions and refunds as provided by orders heretofore issued by the Commission in proceedings involving Michigan Wisconsin.

(K) This order is without prejudice to any claims or contentions which have been made or which may hereafter be made by the Commission, the Commission Staff, Michigan Wisconsin, or any other party affected by this order, in any proceeding now pending, or which may hereafter be instituted by or against Michigan Wisconsin, or any other person or party affected by this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## CITY OF MOSS POINT, MISSISSIPPI, AND UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP67-57

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 13, 1967)

On September 8, 1966, the City of Moss Point, Mississippi (Applicant) filed in Docket No. CP67-57, an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing United Gas Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by the Applicant and to sell and deliver to Applicant from Respondent's pipeline facilities located near the eastern edge of the City of Moss Point, Mississippi, volumes of natural gas up to 3,478 Mcf daily for resale and distribution in the City of Moss Point, all as more fully set forth in the application.

Applicant proposes to construct and operate 4.5 miles of 6-inch lateral transmission pipeline extending from a connection with Respondent's facilities at the eastern edge of Moss Point to its existing gas distribution system, in order to secure a supply of natural gas directly from the Respondent for continued resale and distribution in Moss Point, in lieu of the supply presently supplied by the City of Pascagoula, Mississippi, on a rate basis consisting of purchased gas cost plus a transportation charge of 7 cents per Mcf.

The Applicant has owned and operated its municipality owned natural gas distribution system since 1941; and has been supplied with natural gas by the City of Pascagoula under an agreement of February 4, 1941, amended February 2, 1943, which expired on August 19, 1966. The City of Pascagoula has to date supplied a maximum daily quantity of 3,357 Mcf during the winter of 1965-66. United Gas Pipe Line Company now has a high pressure transmission line within the city limits of Moss Point, from which a supply of natural gas can be obtained without the payment of the present transportation charge of 7 cents to the City of Pascagoula. An estimated saving of $27,048 can be effected by the Applicant in the third year of operation of the proposed plan to buy natural gas from United Gas Pipe Line Company.

The total estimated cost of new construction is $122,000 which cost will be defrayed from internally generated funds and by the sale of revenue bonds.

After an agreement reached by the Applicant and the City of Pascagoula, dated February 7, 1967, the City of Pascagoula by letter filed March 20, 1967, withdrew its intervention filed October 11, 1966. The agreement provides for (1) the continuance of service by Pascagoula until Applicant has renovated its distribution system, (2) the continuance of service by Pascagoula to certain consumers residing within the city limits of Moss Point for a period of two years, and thereafter the sale of the related facilities by Pascagoula to Moss Point, and (3) the granting of easement rights by Moss Point to Pascagoula for the latter's transmission lines presently running through Moss Point.

Respondent filed an answer in this proceeding on October 3, 1966 stating it had no objection to the granting of the requested order for service.

The hearing presently scheduled for April 17, 1967 pursuant to the notice of the Commission issued February 8, 1967, is cancelled, and the matters involved are herein disposed of in accordance with the Commission's rules and regulations relating to such proceedings.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on September 21, 1966 (31 F.R. 12419). No protest, petition to intervene or request for hearing other than the petition to intervene of Pascagoula, Mississippi, withdrawn on March 20, 1967, has been filed in this proceeding.

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) Applicant, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in the City of Moss Point, Mississippi, within two years from the date of the issuance of this order.

(5) Respondent should be prepared to deliver gas to Applicant upon sixty days notice from Applicant.

(6) The requirement that Respondent serve Applicant, as requested, will not impair its ability to render adequate service to existing customers.

(7) The billing demand of Pascagoula should be adjusted as hereafter ordered.

*The Commission orders:*

(A) United Gas Pipe Line Company is directed to establish physical connection of its facilities at two delivery points with the facilities proposed to be constructed and operated by Applicant as hereinbefore described, and to sell and deliver to Applicant its natural gas requirements under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission the date of commencement of service to Applicant within 10 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within two years from the date of issuance of this order.

(D) Respondent shall be prepared to deliver natural gas to Applicant upon sixty days notice from Applicant.

(E) For the twelve month period commencing with the month in which initial delivery to Moss Point takes place, Respondent shall reduce Pascagoula's monthly billing demand by the amount which Moss Point contributed to said billing demand. Such reduction shall be ascertained by subtracting Pascagoula's sale to Moss Point from United's sale to Pascagoula.

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Before Commissioners: Lee C. White, Chairman; Carl E. Bagge and John A. Carver, Jr.

## TEXACO INC., DOCKET NO. RI67-342

### ORDER DENYING REQUESTS

(Issued April 13, 1967)

Lone Star Gas Company (Lone Star) filed on March 23, 1967, a protest to the proposed unilateral increase in rate from 5.36¢ to 16.50¢ per Mcf tendered by Texaco Inc. (Texaco) on March 6, 1967, for the sale of natural gas to Lone Star from Stephens County, Oklahoma. Texaco's proposed rate, which was designated as Supplement No. 2 to Texaco's FPC Gas Rate Schedule No. 103, was suspended for five months to September 6, 1967, by order issued April 4, 1967 in the above-entitled proceeding.

Lone Star in its protest points out that the proposed rate exceeds not only the applicable area increased rate ceiling but the initial rate ceiling of 15¢ per Mcf as well. Lone Star also states that the gas sold is low pressure gas, requiring compression by it and that the well on the subject lease is a low quantity producer. Lone Star therefore contends the proposed increase is clearly unreasonable and should be rejected. In the alternative, Lone Star requests that Texaco's proposed rate be suspended for five months and that the Commission enter upon an immediate hearing concerning the lawfulness of such rate.

Lone Star also suggests that the Commission institute a rule-making proceeding to establish appropriate rules to govern unilateral increases by producers after the expiration or cancellation of their contracts. Lone Star asserts that without some reasonable limitation on such increases purchasers will be unable to protect themselves against unwarranted and unjustifiable increases.

Since the contract has expired, Texaco is not barred from filing a unilateral increase.[1] Accordingly, there is no justification for rejecting Texaco's increase as requested by Lone Star.

The Texaco increase amounts to approximately $17,000 on an annual basis, and as far as we can ascertain will have no triggering impact on other producer sales in the area. In these circumstances an immediate hearing is not warranted.

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[1] See *Sunray Mid-Continent Oil Co. v. F.P.C.*, 364 U.S. 137. See also *Continental Oil Company (Operator), et al.*, order issued March 18, 1963, 29 FPC 525, and the Commission cases there cited.

It is also unnecessary at this time to institute a rule-making proceeding. Aside from any question as to the legality of such action, it would appear that the problems which may arise from a unilateral filing can better be disposed of on a case by case basis because of the many variables involved in these matters, such as the level of the rate, the amount of increase in purchased gas cost, the triggering impact, and the prospects for an early area rate decision.

*The Commission orders:*

For the reasons set forth above, Lone Star's requests for rejection of Texaco's proposed increased rate, and, in the alternative, for an immediate hearing are denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## CITY OF ANDERSONVILLE, GEORGIA AND SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP67-156 (PHASE I)

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 14, 1967)

On December 5, 1966, the City of Andersonville, Georgia (Applicant) filed in Docket No. CP67-156 an application, as supplemented on January 19, 1967 and February 9, 1967, and amended on March 13, 1967, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing South Georgia Natural Gas Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the City of Andersonville and environs, all as more fully set forth in the application, as amended.

By the instant application, as amended, Applicant proposes to construct and operate, in two phases, a metering facility (Phase I) to be utilized in the sale of natural gas by Applicant to the Mullite Company of America (Mullite Company) and a distribution system (Phase II) to be utilized in the local distribution of natural gas in the City of Andersonville and environs.

The estimated natural gas requirements of the Mullite Company under Phase I of Applicant's proposal are 55,000 Mcf of annual interruptible service, 1,560 Mcf of firm annual service and 6 Mcf of firm peak day service. Under Phase II of the proposal, Applicant would require an estimated 7,226 Mcf and 115 Mcf, respectively, of firm annual and peak day service.

In order that physical connection be established between Applicant's proposed facilities and Respondent's transportation facilities, Applicant requests that Respondent be directed to construct approximately 0.4 miles of 4.5-inch O.D. lateral pipeline extending from Respondent's mainline facilities to Applicant's proposed town gate metering station.

Applicant states that it has filed an application with the Department of Housing and Urban Development (HUD) for a Public Facility to finance its proposed facilities and that, although favorable action is anticipated, HUD has informed Applicant that it is temporarily without funds with which to grant the loan.

The Mullite Company, a new industry, is presently building a plant in the City of Andersonville and will provide new employment for the area. In order that the Mullite Company may commence operations that will enhance the economic status of the area, Applicant's proposal was divided into two phases, denoting the facilities and service required by the Mullite Company as Phase I. Phase II will be delayed pending financing arrangements.

Natural gas service to Applicant will be made under Respondent's FPC Rate Schedules G-1, at 52.91 cents per Mcf, and I-1, at 32.5 cents per Mcf.

The total estimated cost of Applicant's Phase I and Phase II facilities is $63,500.

Phase I of Applicant's project, which will cost less than the $13,500 available to Applicant for construction, will be financed by Applicant and the Mullite Company. Phase II will be financed from the proceeds of a $50,000, 30-year, 4 percent bond issuance to be underwritten by HUD.

In its answers filed on December 22, 1966, and March 30, 1967, Respondent stated that it has no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no protest, petition for leave to intervene or notice of intervention has been filed herein.

*The Commission finds:*

(1) Respondent, South Georgia Natural Gas Company, a Georgia corporation having its principal place of business in Thomasville, Georgia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 3, 1954, in Docket No. G-1915 (13 FPC 666).

(2) Applicant, City of Andersonville, Georgia, is a municipal corporation incorporated under the laws of the State of Georgia and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said community.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant, as set forth in the application, as amended, and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver natural gas to Applicant, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CHUGACH ELECTRIC ASSOCIATION, PROJECT NO. 2170–ALASKA

### ORDER APPROVING EXHIBIT K AND MODIFYING LICENSE

(Issued April 14, 1967)

Chugach Electric Association, Inc. of Anchorage, Alaska, licensee for the Cooper Lake Project No. 2170, situated on Cooper Lake, Cooper Creek and Kenai Lake, Alaska, on April 25, 1966 filed for Commission approval a new Exhibit K map showing a proposed relocation of the existing 115 kv transmission line which extends from Quartz Creek substation to Anchorage substation. The line occupies lands of the United States within the Chugach National Forest.

The licensee seeks authorization to change the route of the existing transmission line around the end of Turnagain Arm from Ingram Creek to the town of Girdwood. The proposed route will relocate the transmission line inland from Turnagain Arm, the railroad and the highway.

Licensee represents that as a result of the Good Friday Earthquake of 1964, certain topographical changes occurred which caused the 115 kv transmission line to be subject to tidal action and ice flows in Turnagain Arm of Cook Inlet.

According to the application, the proposed relocation is necessary for the following reasons: (a) The line is inaccessible at least half of the time due to high tides; (b) The line is constantly being damaged by tidal undercutting wave action and ice flows; and (c) the constant and continual expensive repairs to the existing line are an economic hardship.

The Department of Agriculture, in reporting on the application, recommended approval of the proposed transmission line relocation provided that Articles 32, 33 and 34 of the license amendment issued June 14, 1962, are made applicable to the line to be relocated. These articles relate to the construction, location and operation of a portion of the Cooper Lake—Anchorage 115 kv transmission line which was authorized by the June 14, 1962 order, 27 FPC 1247.

The Department also asked that the licensee be required to remove all portions of the replaced transmission line within a reasonable time under the supervision of the Department or Agency of the United States having jurisdiction of the lands involved and that the licensee obtain letters from the Alaska Railroad Commission, the State of Alaska Department of Highways and the Army Corps of Engineers stating their non-objection to the construction across their respective existing rights-of-way within the Chugach National Forest.

The transmission line, relocated as authorized herein, will be subject to Articles 32, 33 and 34 since they are part of the license for the project. The additional requirements recommended by the Department of Agriculture are being embodied in Articles 35 and 36 which we are adding to the license.

*The Commission finds:*

(1) The license, further amended as hereinafter provided, will not interfere or be inconsistent with the purpose for which the Chugach National Forest was created or acquired, and will not alter any of the basic facts upon which the license was issued.

(2) Exhibit K (FPC No. 2170–42) conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(3) Articles 35 and 36 containing conditions recommended by the Department of Agriculture with respect to the realignment of this line are reasonable and should be made a part of the license for this project.

*The Commission orders:*

(A) Exhibit K (FPC 2170–42) is hereby approved as part of the license for Project No. 2170.

(B) The license for Project No. 2170 is amended to include the following additional articles:

> *Article 35.* The licensee shall remove or otherwise dispose of all portions of the existing transmission line replaced by the new transmission line relocation shown in Exhibit K (FPC No. 2170–42). All disposal work shall be accomplished within twelve months after completion of the relocation. Disposal methods shall be subject to the approval of the Department or Agency of the United States having supervision over the lands involved.
>
> *Article 36.* Licensee shall execute appropriate agreements with the Alaska Railroad Commission, the State of Alaska Department of Highways and the Army Corps of Engineers before commencing construction of the transmission line shown in Exhibit K (FPC No. 2170–42) across their existing rights-of-way in the Chugach National Forest and shall file such agreements with the Commission and the Forest Service.

(C) The Licensee is authorized to relocate its 115 kv transmission line shown on Exhibit K (FPC 2170–42) subject to the terms and conditions of the license for Project No. 2170, as amended.

(D) These amendments in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any part, provision or condition of the license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## WISCONSIN MICHIGAN POWER COMPANY, PROJECT NO. 2523

### ORDER ISSUING LICENSE (MINOR)

(Issued April 14, 1967)

Application was filed on May 17, 1965 and supplemented on September 16, 1965, by Wisconsin Michigan Power Company (Applicant) of Appleton, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2523, known as the Oconto Falls Plant, located on the Oconto River in the City of Oconto Falls, Oconto County, Wisconsin. No lands of the United States are affected by the project.

The dam was constructed in 1902, and hydroelectric generation at the powerhouse began in 1915. Reconstruction of the dam structure was completed in the latter part of 1922 and further reconstruction was completed in 1931. There has been no project construction since the 1935 amendment to the Act.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interest of navigation is concerned.

The Department of the Interior, in reporting on the application, stated that the project as currently operated, does not affect adversely fish and wildlife resources. The Department recommended that the project lands now owned in fee by Applicant, as shown on Exhibit K (FPC No. 2523–1), filed as part of the application for license, be held under project control by Applicant for recreational development should the need for such use be required in the future. By Article 13, we are providing for the filing by Applicant of an Exhibit R, which is a proposed plan for full public utilization of project water and lands for recreational purposes.

The Department of Health, Education, and Welfare, has reported that according to the Wisconsin Committee on Water Pollution, no water quality degradation due to pollution or vector control problem exists in the area of the Oconto River occupied by the project.

The Oconto River rises in northeastern Wisconsin and flows southeasterly a distance of 110 miles into Green Bay, an arm of Lake Michigan. In Docket No. DI–165–Wisconsin (5 FPC 489, 490), the Commission on April 30, 1946 found the Oconto River is a navigable water of the United States from a point above the location of the proposed Stiles Dam project at mile 14.2, to its mouth. The Oconto Falls Plant is located some 6 miles upstream from Stiles. The Commission also found that for many years substantial quantities of logs were floated down the Oconto River to mills along that river and in some cases the sawed lumber from such mills was rafted down the river to Green Bay and from there into Lake Michigan for use in other areas. Some of the logs referred to above were floated from points about 90 miles upstream from the Oconto Falls Plant, downstream to lumber and paper mills located at Oconto Falls, the site of the Oconto Falls Plant.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

In our order on rehearing issued February 17, 1965 in *Wisconsin Power & Light Company*, Project No. 2347, *et al.* (33 FPC 275), we stated that we will, if the Applicant so wishes, issue licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

*The Commission finds:*

(1) The Oconto River is a navigable water of the United States from its mouth in Green Bay to points near its source, 110 miles upstream from its mouth.

(2) Oconto Falls Project No. 2523 is located on navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of Wisconsin and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,920 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Act:

> Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plants by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

*The Commission orders:*

(A) This license is hereby issued to Wisconsin Michigan Power Company (Licensee) of Appleton, Wisconsin, under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2523, located on the Oconto River, a navigable water of the United States, in Oconto County, Wisconsin, subject to the terms and conditions of the Federal Power Act insofar as not expressly waived herein, which Act is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Oconto Falls Project No. 2523 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined;

(ii) the existing Oconto Falls Project consisting of (1) a concrete gravity dam about 1,914 feet long with a 28-foot operating head, (2) two earth sections about 175 feet and 1,350 feet long, (3) an 84-foot concrete spillway containing four tainter gates 11 feet high, (4) a 240-acre reservoir from which water is drawn to operate four hydroelectric units—two rated at

480 kw each, and the other two rated at 120 kw and 300 kw, all housed in a 33.5-foot by 70-foot stone masonry powerhouse; and

(iii) all other structures, fixtures, equipment, or facilities which are located in the project area and are useful in the maintenance and operation of the project; and all rights and interests the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577) which terms and conditions designated as Articles 1 through 11 are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

*Article 12.* The Licensee shall pay to the United States the following annual charge, effective April 1, 1962:

For the purposes of reimbursing the United States for the costs of administration of Part I of the Act, $96.00 per annum.

*Article 13.* Licensee shall submit for Commission approval within one year from the date of issuance of this license an Exhibit R which conforms with requirements of Section 4.41R of the Commission's Regulations under the Federal Power Act.

*Article 14.* The licensee shall cooperate with the Regional Engineer, Federal Power Commission, or such other officer or agent as the Commission may designate, in an investigation during the summer of 1967 to correct the problem of algae proliferation in the deadwater area below the Oconto Falls Dam and shall make such correction as the Commission shall deem necessary after notice and opportunity for hearing.

(D) The terms and conditions of the Act, which it has been found to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## CITIES SERVICE GAS COMPANY, DOCKET NO. CP66–188

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 17, 1967)

On March 8, 1967, Cities Service Gas Company (Petitioner) filed in Docket No. CP66–188 an application to amend the order of March 7, 1966, 35 FPC 343, in said docket, issuing a certificate of public convenience and necessity authorizing the installation and operation of transmission and compressor facilities at Petitioner's Hugoton Compressor Station in Grant County, Kansas, all as more fully set forth in the application to amend. Cities requests a one-year extension until March 7, 1968 within which to construct and place in operation the facilities authorized.

Petitioner states that it subsequently became necessary to file an emergency application to increase the horsepower at Cities' Saginaw Compressor Station (Docket No. CP67-7). The emergency application was granted on September 16, 1966, 36 FPC 639, and the compressor unit which had been purchased to be installed at the Hugoton Station under the authority of the certificate in this proceeding was installed at Saginaw to meet the emergency situation which existed there.

The need for additional compressor horsepower at the Hugoton Station continues to exist. Cities hopes to be able to install the 2,000 horsepower authorized in this proceeding prior to March 7, 1968.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued March 7, 1966, in Docket No. CP66-188 be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued March 7, 1966, in Docket No. CP66-188 is amended so as to extend the time for completion of the authorized facilities to March 7, 1968.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP67-195

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 17, 1967)

On January 6, 1967, Colorado Interstate Gas Company (Applicant), filed in Docket No. CP67-195 an application together with a supplement thereto on February 14, 1967, and an amendment on March 7, 1967, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities for the transportation and sale for resale in interstate commerce of natural gas, all as more fully set forth in the application, supplement and admendment thereto.

Applicant requests authorization to construct and operate 21.3 miles of 20-inch loop line between Keyes Station, Oklahoma and Campo Junction, Colorado and to construct and operate a new meter station and 0.8 mile of 6⅝-inch lateral line in Weld County, Colorado for increased deliveries to Cheyenne Light, Fuel and Power Company (Cheyenne).

The facilities proposed herein will, with previously authorized additional deliveries from storage, increase Applicant's system peak day sales capacity to 954,850 Mcf. Present contracted firm requirements for the 1967-68 heating season amount to 939,996 Mcf, leaving uncommitted system capacity of approximately 14,854 Mcf.

Cheyenne has contracted with Applicant for additional firm deliveries during the year 1967 and has executed a new service agreement with Applicant for an increase of 5,000 Mcf (to a total of 46,500 Mcf) in Cheyenne's demand volume under Rate Schedule P-1, effective April 1, 1967. The service agreement includes a new Colorado-Wyoming State line delivery point to provide Cheyenne with more flexibility to accept the increase in deliveries. Cheyenne has agreed to make a contribution in aid of construction to Applicant equal to the total cost of the 0.8 mile of 6⅝-inch lateral pipeline.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 12, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement, amendment and exhibits, submitted in support of the authorizations and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The proposed construction and operation of facilities and sale of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) It is appropriate in the administration of the Natural Gas Act and in the public interest to accept for filing Applicant's service agreement dated September 1, 1966.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, authorizing the construction and operation of facilities, and the sale of natural gas described herein and as more fully described in the application, supplement and amendment filed in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by January 1, 1968.

(D) Colorado Interstate Gas Company's Service Agreement dated September 1, 1966, is accepted for filing effective on the date of the commencement of the increased service to Cheyenne.

(E) Cheyenne shall make a contribution in aid of construction equal to the total cost of the 0.8 mile of 6-inch lateral line.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP67-240

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 17, 1967)

On February 27, 1967, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP67-240 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1967, and operation of certain natural gas facilities, all as more fully set forth in the application.

By the instant application, Applicant seeks authorization to construct and operate various natural gas facilities which will enable it to attach to its certificated main pipeline system natural gas which will be purchased from authorized independent producers in the general area of its system.

The total estimated cost of Applicant's proposed construction will not exceed $200,000, with no single project to exceed a cost of $50,000. Applicant proposes to finance its proposed construction from internally generated funds.

After due notice, no protest, petition to intervene, or notice of intervention has been filed herein.

At a hearing held on April 12, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket No. G-220 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $200,000, with no single project to exceed a cost of $50,000.

*The Commission finds:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Montana-Dakota Utilities Co., to construct during the calendar year 1967 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $200,000, with no single project to exceed a cost of $50,000.

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## OPINION NO. 515-A

## VIRGINIA ELECTRIC & POWER COMPANY, DOCKET NO. E-6684

### MEMORANDUM OPINION AND ORDER DENYING APPLICATION FOR REHEARING

(Issued April 17, 1967)

*Syllabus*

1. Prior determination that Roanoke Rapids project has not realized any dependable capacity gain as result of operations of upstream federal projects rests squarely upon substantial evidence of record and is consistent with definition "dependable capacity" term in FPC Form 12, Schedule 16. P. 769.

**2. Import of *proviso* in FPC Form 12, Schedule 16, is that consideration is to be given probability of frequency and duration of heaviest flows which will adversely affect hydro plant capacity; it is not necessarily limited to the one heaviest flow of record. P. 769.**

**3. There is no validity in assertion of gross error by reference in prior Opinion to Commission practice in evaluating potential hydroelectric projects on other rivers, such as the Ohio; reference is not of basic decisional significance and serves only to illuminate fact that determination here shares consistency with current practice. PP. 770, 771.**

**4. Commission *denies* application for rehearing of prior Opinion and order.**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

CARVER, *Commissioner:*

By Opinion No. 515 and order issued February 17, 1967, 37 FPC 340, we found that the Virginia Electric & Power Company (Vepco) was liable under Section 10(f) of the Federal Power Act for headwater benefits conferred upon its Roanoke Rapids Project by the upstream federal John H. Kerr and Philpot Projects during the period August 1, 1955 through December 31, 1962, in the amount of $983,300 plus $43,986 for costs of making our determination. We ordered Vepco to pay to the Commission such amounts less any sum which it may have heretofore paid on account. This determination was made over the opposition of the Secretary of Interior (Interior) who had intervened in these proceedings to assert, among other points, that Vepco was liable for a total assessment of $4,155,000 plus costs, or in the alternative, no less than $2,799,600 plus costs.

On March 20, 1967, Interior filed an application for rehearing of the above Opinion and order, stating that the Commission had erred: (1) in the approach to and consideration of the matter of capacity gains; (2) in not finding that Vepco's Roanoke Rapids Project had realized a gain of 35 megawatts or at the very least 17 megawatts in dependable capacity because of regulation by the upstream federal projects; (3) in referring to Commission practice in evaluating potential hydroelectric projects on other rivers, such as the Ohio, when such practice was not considered in the hearings; (4) in sustaining the Examiner's findings on pre-draw operations; (5) in sustaining the Examiner's treatment of the amounts collected for the administration of Part I of the Federal Power Act.

We find that the grounds set forth for rehearing in Interior's application are not persuasive. Most of the issues argued by Interior for rehearing, apart from that in (3) above, are simply restatements of arguments previously advanced by Interior, and were adequately covered in the Examiner's decision and in the Commission's opinion. We deem it appropriate, however, to add the following comment to the position expressed in Opinion No. 515 and order.

Our determination that Vepco's project at Roanoke Rapids has not realized any dependable capacity gain as the result of the operations of the upstream federal projects rests squarely upon substantial evidence of record and is consistent with the definition of the term "dependable capacity" in FPC Form 12, Schedule 16. In that definition the following *proviso* is plainly enunciated:

> * * * In cases where the stream-flow records indicate that the most adverse flows are not likely to occur except at long intervals of time and are likely to be of very short duration, the figures used in determining the capacity available from hydro plants may be modified, treating such abnormal limitations as an emergency condition to be covered by the reserve capacity. * * *

The record in this proceeding satisfactorily demonstrates that floods which would impair the capability of the Roanoke Rapids Project by even one megawatt must attain a flow of at least 70,000 cubic feet per second on an unregulated river, and that a flood of this magnitude or greater occurs so infrequently as to warrant treatment as an emergency condition under the above *proviso*. Thus, during the 38-year period from 1912 through 1949 when the Roanoke River was not regulated, there were only 34 floods with a flow of 70,000 cubic feet per second or more, extending over a combined period of 70 days out of a total time period of 13,878 days. On the basis of this showing of record, the full capability of the Roanoke Rapids Project would not have been impaired by flooding on an unregulated river about 99.5 percent of the time. Any possible loss in plant capability in the event of a flood of 70,000 cubic feet per second or more on an unregulated river may be regarded as an emergency condition to be covered by Vepco's reserve capacity under the Form 12 definition.

Interior's assertion that the *proviso* in FPC Form 12, Schedule 16, is limited in its application only to the one single period of the most adverse flows of record, namely the flood of 254,000 day second feet[1] of August 18, 1940, overlooks the essential meaning of the *proviso*. The import of the *proviso* is that consideration is to be given to the probability of the frequency and duration of the heaviest flows which will adversely affect the capacity of a hydro plant. This consideration is not necessarily limited to the one heaviest flow of record. Other "most adverse flows" are to be considered for the purpose of determining whether their probability of recurrence and duration have meaningful significance with respect to the dependable capacity of the hydro plant.

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[1] A day second foot is the volume resulting from a uniform flow of one cubic foot per second flowing for a period of one day (86,400 cubic feet).

Interior restates arguments originally presented in this proceeding that the plant capability of Roanoke Rapids would be impaired by a flow of just over 20,000 cubic feet per second rather than 66,000 cubic feet per second, and that there were 73 periods of high flows over 50,000 day second feet during the 38-year period from 1912 through 1949 which would have impaired the Roanoke Rapids Project by four megawatts to 35 megawatts had it then existed on an unregulated river. Without conceding the validity of Interior's assertion, it may be noted that these 73 periods of high flows, at Interior's alleged impairment rates, would have affected the Roanoke Rapids Project only about 1.4 percent of the time during the 38-year period from 1912 through 1949. Thus, even according to Interior's estimates, the full capability of the Roanoke Rapids Project would not have been impaired by floods in excess of 50,000 day second feet on an unregulated river about 98.6 percent of the time. Moreover, Interior's conclusions are based on extensive extrapolation from very limited data, obtained in one case from observing the Roanoke Rapids operations for two days, and in the other case, only one day. The calculations of staff's witness and of Vepco's witness, on the other hand, are based on the use of model tests in accordance with recognized practice. We find that the staff and Vepco estimates based on these model tests appear to be more reliable than Interior's estimates.

We further observe that Interior's calculations failed to credit Roanoke Rapids' installation with an adequate efficiency rating during periods of heavy flow because Interior apparently did not give sufficient weight to the fact that the cavitation problem at Roanoke Rapids is lessened during these periods. Also, although Interior has questioned staff's calculations based on a formula using gross head rather than net head, the testimony of staff's witness shows that this formula reflects an overall factor which assumed a loss in gross head, and that such loss was taken into consideration in staff's calculations. The evidence of record adequately supports our conclusion that Roanoke Rapids has not realized any dependable capacity gain as the result of the operations of the upstream federal projects, and that any impairment by reason of high water flows on an unregulated river would occur so infrequently as to be considered properly as an emergency condition consistent with the definition in FPC Form 12, Schedule 16.

The Commission finds no validity in Interior's assertion that gross error was committed in Opinion No. 515 and order by the reference therein to Commission practice in evaluating potential hydroelectric projects on other rivers, such as the Ohio, where projects were credited with full capacity value upon a showing that capability will be available 95 percent of the time. As we have stated above, our conclusion that the Roanoke Rapids Project has not realized any dependable capacity gain as the result of the operations of the upstream federal projects rests upon the evidence of record in this proceeding as applied to the definition of the term "dependable capacity" in FPC Form 12, Schedule 16. This conclusion stands alone on the facts adduced in this proceeding, and is independent of any other proceeding. Commission reference to the handling of the Ohio River projects is not of basic decisional significance in this matter, and serves only to illuminate the fact that the determination in this case shares a consistency with current Commission practice.

The Commission again expresses the finding made in Opinion No. 515 and order that there is an indication in the record that Roanoke Rapids realizes plant capability gains as a result of the operation of the upstream federal projects, that it is not possible for us to ascertain the extent and value of those gains on this record, and accordingly that there should be reserved for determination at a later date what further charges should be assessed against Vepco to reflect such plant capability gains for the period between August 1, 1955 and December 31, 1962.

*The Commission finds:*

The assignments of error and grounds for rehearing set forth in Interior's application for rehearing filed in this proceeding present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 515 and accompanying order.

*The Commission orders:*

The application for rehearing filed by the Secretary of Interior on March 20, 1967, is denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP67-209

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 19, 1967)

On January 25, 1967, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP67-209 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the 12-month period following the issuance of the Commission's order herein, and the operation of gas purchase facilities to enable

Applicant to attach to its certificated main pipeline system natural gas which will be purchased from authorized independent producers in the general area of its system, all as more fully set forth in the application.

Applicant proposes to construct and operate routine gas supply facilities, including pipeline, metering and compression facilities.

The total estimated cost of Applicant's proposed facilities will not exceed $600,000, with no single project exceeding a cost of $150,000. Applicant proposes to finance said costs from funds on hand.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on April 12, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the 12-month period following the issuance of this certificate and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $600,000, with no single project to exceed a cost of $150,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Colorado Interstate Gas Company, to construct during the 12-month period following the issuance of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the 12-month period following the issuance of this order and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $600,000, with no single project to exceed a cost of $150,000.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP67-191

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued April 19, 1967)

On December 30, 1966, Mountain Fuel Supply Company (Applicant) filed in Docket No. CP67-191 an application pursuant to Section 7(b) and Section 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of other facilities, all as more fully set forth in the application.

Applicant proposes to construct approximately 3.5 miles of 10¾-inch diameter pipeline and 25.7 miles of 8⅝-inch diameter pipeline extending a total of 29.2 miles from the end of Applicant's existing 10¾-inch pipeline terminating in the West Side Canal Field to a central delivery point in the North Craig Field, together with the necessary fittings, valves, meters and other accessories. The new pipeline will parallel the existing 4½-inch pipeline to the Four-Mile Creek Field (certificated in Docket No. CP65-348) for a distance of about 2.0 miles. This portion of the 4½-inch lateral will not be needed after the 10¾-inch pipeline is in operation.

Applicant proposes to abandon said two miles of 4½-inch lateral which will be removed and salvaged. The remaining length of the 4½-inch lateral will be tied into the 10¾-inch pipeline. The new facilities will attach a new gas supply in the North Craig Field, Moffat County, Colorado, estimated at 53,040,000 Mcf with a deliverability of 12,000 Mcf per day.

Applicant estimates that the total cost of the proposed facilities will be about $408,000, including the cost of tying in the 4½-inch lateral. The cost will be financed out of funds on hand and from short term bank borrowing.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on March 16, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record.

*The Commission finds:*

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 15, 1940, in Docket No. G-154 (2 FPC 288).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application filed in this proceeding are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities, as hereinbefore described and as more fully described in the application, filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding is granted.

(B) A certificate of public convenience and necessity is issued to Applicant in this proceeding, authorizing the construction and operation of facilities, as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities authorized in paragraph (B) above shall be constructed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within twelve months of the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

# PROHIBITION OF DISCRIMINATION AT RECREATIONAL FACILITIES AT LICENSED HYDROELECTRIC PROJECTS, DOCKET NO. R-304

## ORDER NO. 341

### AMENDING REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued April 19, 1967)*

On June 8, 1966 the Commission gave notice (31 F.R. 8376, June 15, 1966) that it proposed to issue a rule prohibiting discrimination on account of race, creed, color, or national origin in connection with recreation facilities at licensed projects. The notice proposed, in addition to this prohibition, a requirement that employees of the licensee and any persons who lease or manage its recreation facilities be instructed to comply with it and that the licensee post signs informing the public that the facilities would be operated on a nondiscriminatory basis.

Five comments were received on the proposed rule.[1] All agreed with the basic objective of eliminating discrimination at licensed projects, but one expressed doubt as to the propriety of utilizing the Federal Power Act (and particularly its sanctions, such as forfeiture of the license) to promote an antidiscrimination policy. Three of the comments suggested modifications in the posting requirement and while the suggested changes were in part mutually inconsistent we have taken account of these suggestions in the rule as adopted by this order.

The respondent who objected to "the use of federal power in this manner to enforce an unrelated law * * * however admirable we may regard the law and the policy its embodies" misconceives the basis on which the Commission proposed to issue the rule. We would not be enforcing an unrelated law (such as the Civil Rights Act of 1964), but carrying out the logic and policy of section 10(a) of the Federal Power Act, which gives the Commission responsibility for insuring the fullest practicable use of the nation's waterway resources for recreational as well as electric energy and navigation purposes. It cannot seriously be argued that a limitation of availability based on race, creed, color, or national origin is consistent with such use of project lands and waters for recreation.

The same respondent argued that it would be bad policy "to draft regulations that are open to the imposition of draconic penalties for minor or accidental infractions." The Commission has always conducted its enforcement activities in the belief that sanctions should be appropriate to the infraction, and expects to observe the same policy in this area.

With respect to the posting requirement, three of the comments suggested changes. Two suggested that no reference need be made to the issues of race, creed, color or national origin; one suggested that no signs at all were necessary, but that if required they should not exclude (in the respondent's language) "non-discriminatory rules and regulations * * * [covering payment of rent or assessments by sub-leases, keeping properties neat and free from weeds and debris, the misuse of liquors, creating unnecessary disturbances, disobeying the laws of the area, the county, or the state, etc."

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*Published in the Federal Register on April 27, 1967 (32 F.R. 6487).

[1] Central Nebraska Public Power & Irrigation District, The Commonwealth of Pennsylvania, Philadelphia Electric Co., Rives and Rodgers, Attorneys-at-Law, Portland, Ore., and The Commonwealth of Virginia.

We agree that the direct reference to "race, creed, color, or national origin" should be replaced by a general reference to discrimination, which will cover these as well as any other possible ground of discriminatory exclusion. Posting, however, is necessary in order that members of the community who have in the past thought (perhaps wrongly) that they were not welcome to use the facilities will be apprised of their right to do so. We are altering the regulation amending §8.2(a) so that it will require posting of notice that the recreation facilities are open "to all members of the public without discrimination". The point raised by one respondent regarding compliance with non-discriminatory rules of the licensee and state or local laws is sufficiently covered by the existing language of §8.2(a) which directs the posting of "permissible times and activities, and other regulations regarding such use". To state specifically that state and local laws are applicable is, therefore, quite unnecessary, and might even raise problems of interpretation where old ordinances requiring segregation are still on the books.

Since the proposed change in the title of Part 8 has been accomplished by Order No. 330 in Docket No. R-276 issued December 12, 1966, 36 FPC 1030, 31 F.R. 16201, no further action thereon is necessary.

*The Commission finds:*

(1) The amendments to the regulations, herein prescribed, are necessary and appropriate for the administration of the Federal Power Act.

(2) The revision made in the amendment originally proposed results from suggestions made by respondents to the Notice of Proposed Rulemaking herein and since it neither amounts to a substantial change in the original proposal nor imposes a further burden on persons subject to the regulation, no further notice prior to its adoption is necessary.

*The Commission*, acting pursuant to the provisions of the Federal Power Act, as amended, and particularly sections 10(a) and 309 thereof (41 Stat. 1068, 49 Stat. 858; 16 U.S.C. 803, 825th), *orders:*

(A) Part 8 of Subchapter B, Chapter I of Title 18 of the Code of Federal Regulations is amended as follows:

1. In §8.2, paragraph (a) is revised by adding a new sentence. As amended, §8.2(a) reads as follows:

§8.2 Posting of project lands as to recreational use and availability of information.

(a) Following the issuance or amendment of a license, the licensee shall post and shall maintain at all points of public access which are required by the license (or at such access points as are specifically designated for this purpose by the licensee) and at such other points as are subsequently prescribed by the Commission on its own motion or upon the recommendation of a public recreation agency operating in the area in which the project is located, a conspicuous sign giving the name of the project and the owner of the project, a statement that it is licensed by the Commission and the project number, directions to the areas of the project which are available for public recreation use, permissible times and activities, and other regulations regarding such use, and advising that further information may be obtained at local offices of the licensee in the vicinity of the project. In addition, the licensee shall post at such locations conspicuous notice that the recreation facilities are open to all members of the public without discrimination.

2. A new §8.3 is added, as follows:

§8.3 Discrimination prohibited.

Every licensee maintaining recreation facilities for the use of the public at a licensed project, or employing or permitting any other person to maintain such facilities, shall permit, or require such other person to permit, equal and unobstructed use of such facilities to all members of the public without regard to race, color, religious creed or national origin.

(Secs. 10(a), 309; 41 Stat. 1068, 49 Stat. 858; 16 U.S.C. 803, 825h)

(B) The caption of this proceeding is amended to read as set out above. These amendments shall be effective May 22, 1967.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PHILLIPS PETROLEUM COMPANY, DOCKET NO. CI67-1226 AND MARATHON OIL COMPANY, DOCKET NO. CI67-1227

### ORDER AUTHORIZING EXPORTATION OF LIQUEFIED NATURAL GAS AND DISMISSING APPLICATION FOR PERMIT

(Issued April 19, 1967)

On March 8, 1967, Phillips Petroleum Company and Marathon Oil Company (Applicants) filed in Docket No. CI67-1226 an application pursuant to Section 3 of the Natural Gas Act for authorization to export liquefied natural gas from the United States to Japan, all as more fully set forth in the application.

Applicants propose to export liquefied natural gas from Alaska for sale and delivery in Yokohama, Japan to The Tokyo Electric Power Company, Inc., and The Tokyo Gas Company Limited. Applicants agree to sell and buyers agree to purchase the following annual Btu's of liquefied natural gas during a fifteen-year period ending May 31, 1984:

March 1, 1969, to May 31, 1970: 35,295,000,000,000 Btu's.

June 1, 1970, to May 31, 1971, and each of the subsequent thirteen years: 50,570,000,000,000 Btu's.

The agreement contains an option for a five-year renewal.

The application states that the gas will be sold at a rate of 52.0 cents per million Btu's delivered.

Applicants will construct facilities in the Cook Inlet Basin area, Alaska, for the liquefaction of natural gas, the storage of liquefied natural gas, and the loading of such onto ships for export and delivery to Japan to the aforementioned buyers.

Concurrently with the subject application, Applicants filed in Docket No. CI67-1227 an application pursuant to Executive Order No. 10485 for a permit authorizing the construction, operation and maintenance of facilities at the border of the United States in the State of Alaska for the exportation of natural gas. Said Order designates and empowers the Commission to issue such a permit upon finding that the issuance would be consistent with the public interest and after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense. During the course of processing this application a question was raised by the Department of State as to whether the facilities in question are of the type contemplated by the Executive Order, though both the Secretary of State and the Secretary of Defense agreed that authorization of the proposed export was consistent with the public interest of the United States. Consequently, the Commission presented the issue to the Office of the Legal Counsel of the Department of Justice which, upon consideration of the documents pertaining to the application, has concurred in the conclusion of the Department of State that the Executive Order does not apply, because there will not be facilities at the border involving any physical connection between this country and a foreign country. In view of these conclusions by the relevant agencies of the Executive Branch of the Government (with which, we are informed, the Department of Defense does not take issue), and in the absence of any basis for our independently reaching a contrary position, we shall dismiss, the permit application in Docket No. CI67-1227. We shall, however, in future cases of this nature continue to secure the views of the Departments of State and Defense before taking action under Section 3 of the Natural Gas Act.

After due notice, no petitions to intervene, notices of intervention or protests to the granting of the application in Docket No. CI67-1226 have been received.

*The Commission finds:*

(1) The exportation of liquefied natural gas by Applicants, Phillips Petroleum Company and Marathon Oil Company, from the United States to Japan, as hereinabove described and as set forth in the application in Docket No. CI67-1226, will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act, provided that said exportation be on the terms and conditions hereinafter set forth:

(a) Applicants shall file statements or reports with the Commission from time to time under oath and in such details as the Commission may require with respect to the whole or any part of the instant export operation.

(b) The authorization granted herein is not transferable or assignable and shall remain in full force and effect only so long as Applicants continue the acts or operations herein authorized in accordance with the terms and conditions herein set forth.

(c) The authorization granted herein shall automatically terminate on May 31, 1984. If the five-year renewal option of the agreement between Applicants and buyers is exercised, Applicants must comply with Section 153.8 of the Regulations under the Natural Gas Act.

(d) Applicants shall not, during the terms of the authorization granted by this order, materially change or alter their export operations without first obtaining the permission and approval of the Commission.

(e) In the event that Applicants should abandon or permanently cease for any reason whatsoever all or any part of the instant export operation prior to the termination date described in (c) hereof, Applicants shall forthwith notify the Commission of said fact and the reason therefor.

(f) The maximum annual Btu's of liquefied natural gas to be exported for sale to The Tokyo Electric Power Company, Inc., and The Tokyo Gas Company Limited should not exceed the following:

March 1, 1969, to May 31, 1970: 35,295,000,000,000 Btu's,

June 1, 1970, to May 31, 1971, and each of the subsequent thirteen years: 50,570,000,000,000 Btu's.

(g) Applicants should comply with the requirements of Section 153.8 of the Commission's Regulations under the Natural Gas Act before initiating the proposed exports to Japan.

(2) Applicants do not propose to construct, operate or maintain any facilities at the border of the United States within the contemplation of and for which a permit is required to be issued pursuant to Executive Order No. 10485.

*The Commission orders:*

(A) Authorization is granted to Applicants to export liquefied natural gas from the United States to Japan, as hereinabove described and as set forth in the application in Docket No. CI67-1226, upon the conditions herein set forth and subject to the provisions of the Natural Gas Act and the Commission's Regulations issued thereunder.

(B) The maximum annual Btu's of liquefied natural gas to be exported for sale to The Tokyo Electric Power Company, Inc., and The Tokyo Gas Company Limited shall not exceed the following:

March 1, 1969, to May 31, 1970: 35,295,000,000,000 Btu's,

June 1, 1970, to May 31, 1971, and each of the subsequent thirteen years: 50,570,000,000,000 Btu's.

(C) Applicants shall comply with the requirements of Section 153.8 of the Commission's Regulations under the Natural Gas Act before initiating the proposed exports to Japan and for any other contractual changes including the exercise of the option for renewal.

(D) The application for a permit filed in Docket No. CI67-1227 is dismissed.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## CHRISTIE, MITCHELL & MITCHELL COMPANY, ET AL., DOCKET NOS. G-20001, RI61-123, RI63-23, RI63-398 AND RI63-440; GEORGE MITCHELL & ASSOCIATES, INC., AGENT FOR B. V. CHRISTIE, ET AL., DOCKET NO. RI64-251

### ORDER GRANTING MOTION FOR RELEASE OF ADDITIONAL ESCROWED FUNDS

(Issued April 20, 1967)

By order issued July 19, 1966, 36 FPC 130, in the above-entitled proceedings, the Commission authorized the release of amounts attributable to the interest of Mitchell & Mitchell Gas & Oil Corporation (Mitchell) previously deposited in escrow agreements with The Chase Manhattan Bank of New York City. In lieu of retaining such amounts in escrow, Mitchell was permitted to collect the increased rates involved here, subject to refund, under an agreement and undertaking and a surety bond in the amount of $48,213.39, the total amount reported by Mitchell to have been collected in the escrow agreements in excess of the last firm rate approved by the Commission or in excess of the applicable increased rate ceiling.[1]

Mitchell by letter filed on March 20, 1967, states that the previously reported amounts attributable to its interest in the escrow agreements in Docket Nos.

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[1] The July 19, 1966 order authorized the release of $91,549.47, the total reported amount applicable to Mitchell's interest then deposited under escrow agreements.

G-20001, RI61-123, and RI63-23 were understated by $22,586.28. Mitchell also advises that $19,226.93 of such amount relates to rates collected above the last firm rate or the applicable increased rate ceiling. Mitchell seeks release of the additional amount from the escrow agreements and inquires as to whether it should increase the amount of its surety bond.

Mitchell's request is consistent with the general import of our July 19, 1966 order. We shall therefore allow the release of these additional amounts, but shall also require an increase in the amount of its surety bond as hereinafter ordered.

*The Commission orders:*

(A) Upon notification by the Secretary of the Commission that Mitchell has complied with the provisions of paragraph (B) hereof, The Chase Manhattan Bank of New York as trustee under the escrow agreements in the above-entitled proceedings shall release forthwith to Mitchell the additional $22,586.28 attributable to Mitchell's interest in these proceedings which have been deposited with it. Except as specifically provided herein, these escrow agreements shall remain in full force and effect.

(B) Within 30 days of the date of issuance of this order, Mitchell shall increase its present surety bond in the above-entitled proceedings in the amount of $19,226.93, and shall file a copy of such increased bond with the Commission.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-168

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 20, 1967)

On December 14, 1966, Southern Natural Gas Company (Applicant) filed in Docket No. CP67-168, as supplemented on February 9 and March 2, 1967, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application, as supplemented, in this proceeding.

Specifically, Applicant requests authorization for the following proposals:

(1) The increase in the design daily delivery capacity of Applicant's mainline system by approximately 137,000 Mcf from 1,732,000 Mcf to 1,869,000 Mcf to meet the peak day requirements of Applicant's present customers through the winter of 1969-1970;

(2) The increase in the design daily delivery capacity of the portion of Applicant's system between Macon, Georgia and Aiken, South Carolina by approximately 150,000 Mcf to meet the increasing requirements of present customers served from this portion of the system;

(3) Reinforcement of the existing Savannah, Gadsden, Vicksburg, and Cordova branch lines to meet the increasing requirements of present customers and for safety and security of operation, and

(4) To provide for the transportation through Applicant's South Louisiana supply system of increased volumes of gas from presently connected sources.

Applicant proposes to construct and operate the following facilities in order to accomplish the above four projects, respectively:

(1) 139.5 miles of 26-inch loop pipelines in the States of Mississippi, Alabama, and Georgia, 10 miles of 16-inch and 35.4 miles of 14-inch pipelines in the State of Georgia, and multiple line crossings of the Chickasawhay, Cahaba, and Tallapoosa Rivers;

(2) 35.4 miles of 20-inch and 44.1 miles of 16-inch loop pipelines in the States of Georgia and South Carolina, a multiple line crossing of the Savannah River, and 3,400 horsepower of additional compression at Applicant's Hall Gate Compressor Station;

(3) 27.3 miles of 14-inch loop pipelines for the Savannah, Georgia branch lines; 2.3 miles of 12¾-inch and 1.7 mile of 6⅝-inch loop pipelines for the Gadsden, Alabama branch lines; 2.9 miles of 8⅝-inch loop pipelines for the Vicksburg, Mississippi branch lines, and 5.4 miles of 6⅝-inch loop pipelines and a crossing of the Warrior River for the Cordova, Alabama branch line, and,

(4) 50.2 miles of 26-inch loop pipelines and 31.8 miles of 24-inch loop pipelines in the States of Louisiana and Mississippi, together with 1,350 horsepower, 825 horsepower and 2,750 horsepower of additional compression at the existing compressor stations White Castle, Olga and Lacombe, respectively.

The total estimated cost of the proposed facilities is $42,130,810, which cost will be financed initially by bank loans which will be repaid from the proceeds of the sale of First Mortgage Bonds and from funds on hand.

On March 2, 1967, Applicant filed a statement in this proceeding commenting on the Commission staff's inquiry as to whether future certificates issued to Applicant should impose volumetric limitations on the quantities of gas which Applicant may sell to its customers. Applicant's remarks regarding "open-end" certificates and the responses thereto show that it is desirable to provide by a separate, subsequent order for a formal hearing concerning this issue.

Several petitions to intervene have been filed in this proceeding; however, none of said petitions objects to the disposition of this proceeding by the statutory hearing procedure.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on April 20, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

**(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.**

**(4) The proposed construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.**

**(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.**

***The Commission orders:***

**(A) A certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities for the transportation of natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.**

**(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(2), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.**

**(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.**

**(D) The certificate granted by paragraph (A) above is without prejudice to the final outcome of the formal hearing, to be scheduled by a subsequent order, regarding the issue of whether this and subsequent certificates granted to Applicant should be conditioned to impose limitations on the quantities of gas which Applicant may sell to its customers.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## NEW ENGLAND POWER COMPANY, PROJECT NO. 1904

### ORDER AUTHORIZING EASEMENT ACROSS PROJECT LANDS

**(Issued April 21, 1967)**

**By our order issued November 30, 1966, 36 FPC 913, we authorized the sale of a ten-acre tract of land within the project boundary of New England Power Company's Project No. 1904 to the Town of Brattleboro, Vermont. The subject parcel was to be transferred thereafter to the A.P.W. Products Company, Inc., for use by the latter for expansion of its paper mill operations. The tract is situated close to the western shore of the Connecticut River in the Town of Brattleboro, along a stretch of the river which serves as the pond or reservoir of Project No. 1904. Our approval of the conveyance was made subject to the retention in any such conveyance of flowage rights necessary in the construction, operation and maintenance of Project No. 1904 and a covenant ensuring**

that the use of such land will not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use in accordance with paragraph (C) of the Commission's Order No. 313, issued December 27, 1965, 34 FPC 1546 (18 CFR 2.7(C)). By subsequent order issued January 6, 1967, 37 FPC 67, we modified our aforementioned November 30, 1966 order to include therein a finding that "The aforementioned parcel of Project No. 1904 land herein involved does not have recreational value."

We are now informed by N.E.P.C. in a filing received April 14, 1967, that: (1) Consolidated Cellulose Products, Inc., a New York corporation, has agreed to acquire from A.P.W. Products Company, Inc., among other property, the parcel of Project No. 1904 land which was the subject of our November 30, 1966 order; (2) in connection with such acquisition it will become necessary to obtain from N.E.P.C. an easement of right-of-way across Project No. 1904 lands lying between the subject parcel and the project pond in the Connecticut River, by means of the construction thereon of facilities to draw from and to return to the latter pond, water for use in connection with the paper mill plant to be constructed by Consolidated Cellulose Products, Inc.; and (3) we are requested to authorize the granting of the easement.

According to a draft of the instrument covering the conveyance of the parcel of Project No. 1904 land and the aforementioned easement across other of the project lands, not more than eight cfs of water or a total of 5,100,000 gallons of water per day will be taken from the river for paper mill purposes and the quality of the water to be returned to the river (water taken minus water evaporated or absorbed during its use in the mill) will at all times conform to the standards and rules and regulations of all Federal, State and local governmental authorities having jurisdiction thereof.

*The Commission finds:*

It is necessary and appropriate for the purposes of the Federal Power Act to authorize the granting of the easement of right-of-way over lands within the boundary of Project No. 1904 for the purposes recited above upon the terms and conditions as hereinafter provided.

*The Commission orders:*

(A) New England Power Company is hereby authorized to grant the aforementioned easement to the Town of Brattleboro, Vermont, subject to the retention in any instrument granting such easement of flowage rights necessary in the construction, operation and maintenance of Project No. 1904, and to a further condition that New England Power Company incorporate in any such easement a covenant ensuring that the grantee, his successors and assignees will at all times conform to the standards and rules and regulations of all Federal, State and local governmental authorities having jurisdiction over water quality, and a convenant ensuring that the use of such land will not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use in accordance with paragraph (C) of the Commission's Order No. 313, issued December 27, 1965 (18 CFR 2.7(C)).

(B) The licensee shall file copies of any instrument granting the easement, with the Commission within 30 days of its execution. Within 60 days from the date of completion of construction of the facilities required to withdraw water from and return it to the river, the licensee shall file a drawing to the same scale as Exhibit K, showing the location of such easement or easements.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## MULTIPLE COPIES OF APPLICATIONS REQUIRED TO BE FILED BY PUBLIC UTILITIES, DOCKET NO. R-320

## ORDER NO. 342

### AMENDING §§ 32.4, 32.37 AND 32.50 OF REGULATIONS UNDER THE FEDERAL POWER ACT SO AS TO REDUCE THE NUMBER OF COPIES REQUIRED TO BE FILED THEREBY

(Issued April 21, 1967)*

A recent survey within the Commission of the use to which copies of applications and other filings are put has disclosed that in several instances more copies are required to be filed than are actually needed. Accordingly, we are reducing the number of copies which will hereafter be required with respect to the following classes of applications:

Application under section 202(b) to establish physical connections.

Application for emergency connections of facilities.

Application to export electric energy.

Application for Presidential permit to maintain facilities at the international boundary.

*The Commission finds:*

(1) Since the amendments herein ordered reduces the number of copies of applications and other documents required to be filed with the Commission for its own use, it is unnecessary to comply with the notice and effective date provisions of section 4 of the Administrative Procedure Act.

(2) These amendments to the Commission regulations under the Federal Power Act are necessary and appropriate to the administration of that Act.

*The Commission*, acting pursuant to sections 308 and 309 of the Federal Power Act, as amended (49 Stat. 858; 16 U.S.C. 825g, 825h), *orders:*

(A) Effective upon the issuance of this order, Part 32, Subchapter B, Chapter I of Title 18 of the Code of Federal Regulations is amended as follows:

1. Section 32.4 is revised to read as follows:

§ 32.4 Form and style; number of copies.

An original and six conformed copies of an application under §§ 32.1 to 32.4 must be filed and must conform, in all other respects, to the requirements of §§ 1.15 through 1.17 of this chapter.

2. In § 32.22, the heading is revised to read as follows:

§ 32.22 Application for permanent connection for emergency use; contents; form and style; number of copies.

3. Since § 32.24, by virtue of the provisions of § 32.22 as revised in item 2, above, is repetitious, it is revoked.

4. Section 32.37 is revised to read as follows:

§ 32.37 Form and style; number of copies.

An original and six conformed copies of an application under §§ 32.30 through 32.37 must be filed and must conform, in all other respects, to the requirements of §§ 1.15 through 1.17 of this chapter.

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*Published in the Federal Register on April 29, 1967 (32 F.R. 6622).

5. In § 32.50, paragraph (a) is revised to read as follows:

§ 32.50 Who shall apply.

(a) Any person, firm, or corporation contemplating the construction of, or who is operating or maintaining facilities at the borders of the United States, for the transmission of electric energy between the United States and a foreign country, shall file with the Commission an original and 8 conformed copies of an application for a Presidential permit, in compliance with Executive Order No. 10485, dated September 3, 1953 (3 CFR, 1949–1953 Comp., p. 970).

(Secs. 308, 309, 49 Stat. 858; 16 U.S.C. 825g, 825h.)

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PUGET SOUND POWER & LIGHT COMPANY, PROJECT NO. 2150

### ORDER APPROVING REVISED SUPPLEMENTARY EXHIBIT L DRAWINGS FOR PROJECT AND MODIFYING LICENSE

(Issued April 21, 1967)

On February 20, 1967, Puget Sound Power & Light Company, licensee for Project No. 2150, filed for Commission approval revised supplementary Exhibit L drawings covering the proposed construction of the Lower Baker Development of the project. The latter, known as the Baker River Project, is located on the Baker River, tributary to the Skagit River, in Whatcom and Skagit Counties, Washington, and affects navigable waters and lands of the United States within the Mt. Baker National Forest.

A recent mud slide caused severe damage to the powerhouse. The licensee caused the demolition of the powerhouse to the level of the generator floor, and the generator and other salvageable equipment was dismantled and stored. The slide also destroyed the surge chamber located on the slope above the powerhouse. The licensee proposes to clean out the surge shaft, power tunnel, powerhouse substructure, and outlet tunnel, which were filled with debris.

The revised supplementary Exhibit L drawings show a new powerhouse superstructure planned to be built with a heavy sloping roof especially designed, to shed, and with the aid of hydraulic sluices, to slough off any future slides. The roof and walls of the powerhouse would be anchored to bedrock by stressed anchor bolts, and the roof, side walls and interior support walls are designed to withstand any earth pressures which may be caused by a slide that would bury completely the powerhouse either from above, or from below due to a more fluid mud flow filling the river channel. A new surge chamber would be built on bedrock and connected to an existing surge-shaft located some 100 feet upstream of the demolished surge chamber.

According to cost-of-construction estimates, the total reconstruction costs will be about $3.5 million, including contingency and escalation allowances, engineering and management expenses, and interest during construction. Reconstruction of the powerhouse would place 64,000 kilowatts of capacity back into operation. An alternative plan, involving an underground powerhouse and using the existing power tunnel would be more than $2 million greater than the plan now proposed by the licensee. The licensee's proposed plan is an economical and reasonable method of restoring power generation in the shortest time and yet protect the generating equipment against possible future slides.

The Chief of Engineers has reported that the proposed work will have no effect on navigation of the Skagit River and offered no objection insofar as the interests of navigation are concerned. However, the Corps suggested that the proposed dredging of slide material be coordinated with regard to possible effects on downstream fish and wildlife, as provided for by Article 41 herein.

*The Commission finds:*

The following described revised supplementary Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for Project No. 2150, and the license supplementary Exhibit L drawings which are described herein as being superseded should be eliminated from the license for the project:

*Exhibit L supplementary*

| Sheet No. | Title | FPC No. | Superseding FPC No. |
|---|---|---|---|
| 1 | General Plan and Profile, Lower Baker River Development | 2150-59 | 2150-22. |
| 4 | Powerhouse Cross Sections, Lower Baker River Development | 2150-60 | 2150-40 and 41. |

*The Commission orders:*

(A) The revised supplementary Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2150, and the license Exhibit L drawings described in the finding as being superseded are hereby eliminated from the license for the project.

(B) The following article is hereby added to the license for the project.

*Article 41.* Licensee in dredging slide material during reconstruction of the Lower Baker powerhouse and subsequent operation of the Lower Baker Development shall in cooperation with appropriate State and Federal agencies take all necessary actions to minimize pollution injurious to fish and wildlife or their habitat and any other types of pollution.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SABINE RIVER AUTHORITY OF TEXAS AND SABINE RIVER AUTHORITY OF LOUISIANA, PROJECT NO. 2305

### ORDER APPROVING RECREATIONAL USE PLAN AND MODIFYING LICENSE

(Issued April 21, 1967)

On September 28, 1964, Sabine River Authority of Texas and Sabine River Authority of Louisiana, joint licensees for Project No. 2305, filed, pursuant to license Article 35, a Recreational Use Plan for the project, known as the

Toledo Bend Project, to be located on Sabine River in Newton, Sabine and Shelby Counties, Texas, and Sabine and De Soto Parishes, Louisiana. The September 28, 1964 filing was supplemented by Supplement No. 1 filed August 6, 1965, and by site development drawings for the recreational use areas filed May 19, 1966 and August 4, 1966.

Toledo Bend Reservoir will be the fifth largest man-made reservoir, in terms of surface area, in the Nation and will create an important recreational resource of at least regional significance. Generally speaking, the plan sets out and describes the public use areas and facilities to be provided by the licensees, the types of facilities proposed for concessionaire operation, and recreational developments to be provided by the U.S. Forest Service on lands of the United States within the Sabine National Forest on the Texas side of the Toledo Bend Reservoir.

The Department of the Interior, in commenting on the proposed Plan, recommended special license conditions providing for modification of the plan to include a reservoir zoning plan for the reservation of areas for hunting, fishing and other wildlife purposes and to allow hunting on project lands other than those areas reserved for general recreation, project operation, and public safety. The Department pointed out that, consistent with Commission practice, consideration should be given by the licensees to provide for recreation development adequate to meet anticipated needs beyond the 10-year period of project operation presently covered by the Plan, since the license was issued for a period of 50 years, effective as of October 1, 1963, which might require the acquisition of additional land for recreational development. It is noted that the Department of the Interior indicated that matching Federal funds might be made available from the Land and Water Conservation Fund to assist in the acquisition and development of recreation areas at this project.

The U.S. Forest Service, Department of Agriculture, in commenting on the proposed Plan insofar as it would affect National forest interests, advised that the Service had reached agreement with the licensees concerning the protection of such interests, involving fire protection, recreational resources, reservoir clearing, sale of timber and land lines (surveying).

The State of Louisiana Bureau of Outdoor Recreation, in commenting on the proposed Plan, has advised that insofar as it affects lands within that State, the Plan is in accord with the Louisiana State Comprehensive Outdoor Recreation Plan approved by the Governor of Louisiana, Louisiana State Parks and Recreation Commission, and the Bureau of Outdoor Recreation of the U.S. Department of the Interior. The Texas Parks and Wildlife Department, in commenting on the Plan, has advised that while it appears to the Department that the planning for recreational opportunities on the Toledo Bend Reservoir is adequate, there will be losses to wildlife resources due to the impoundment of the project reservoir.

By letter dated March 15, 1966, the licensees expressed their views respecting the aforementioned comments on the proposed Plan, advising essentially that prior to placing the project in operation, the reservoir will be zoned in cooperation with the State and Federal agencies involved, for hunting and fishing and other purposes affecting wildlife, and that hunting in the area will be permitted as it is under present use, and that the licensees intend to acquire adequate park lands and facilities for recreation during the life of the project as such needs develop.

While we are approving the proposed Recreational Use Plan as submitted by the licensees as part of the license for the project, we are herein providing for the submittal of additional filings to supplement the Plan in the following respects: a revised recreational use plan with respect to planned recreational development and use at the project to provide for public recreational needs for that period of the license following the first 10 years of project operation; reports at stated periods on the licensees' progress in acquiring project lands needed for public recreational purposes as contemplated in the present Recreational Use Plan; functional site plans showing project site developments for recreation by both the licensees and the U.S. Forest Service; and a reservoir zoning plan for recreational uses of project lands and waters, such as hunting, fishing and other wildlife recreational pursuits, and a requirement that certain recreational facilities be constructed and made available for public use by the time the water surface of the project reservoir reaches a specified elevation.

*The Commission finds:*

The following designated and described filings of the Recreational Use Plan for Project No. 2305 conform to the Commission's regulations and should be approved as part of the license for the project:

Plan entitled "Toledo Bend Dam and Reservoir, Sabine River of Texas and Louisiana, Report on Master Plan for Reservoir Recreation Resource Development", dated September 1964, and filed September 28, 1964;

"Supplement No. 1" dated June 1965, and filed August 6, 1965; and

Reproducible site development drawings for the Texas and Louisiana recreational use areas (FPC Nos. 2305–37 through –59), filed May 19, 1966, and August 4, 1966, respectively.

*The Commission orders:*

(A) The Recreational Use Plan filings designated and described in the above finding are hereby approved as part of the license for Project No. 2305.

(B) The license for Project No. 2305 is hereby modified to include therein the following additional articles:

*Article 48.* The Licensees shall with respect to future planning of recreational development and use at the project, file within five years following the date of issuance of this order, for Commission approval, a revised recreational use plan in conformance with the then applicable requirements of the Commission's Regulations under the Federal Power Act, providing for public recreational needs for that period of the license following the first ten years of project operation. Simultaneously therewith Licensees shall advise the Commission of their plans for financing the construction, operation, maintenance and replacement of all recreation facilities needed for optimum development and use of recreational resources of the project during the entire period of the license. The revised recreation use plan as required herein shall include licensee's proposals for land acquisition of all additional land needed for recreational purposes.

*Article 49.* The Licensees shall file with the Commission within 12 months of the date of issuance of this order, and at 12-month intervals thereafter, reports on their progress for acquisition of project lands required for project recreation purposes covered by Licensee's Recreational Use Plan as approved herein; such reports to be filed until all land acquisitions are completed.

*Article 50.* The Licensees shall file for Commission approval the following plans, prepared in accordance with Section 4.42 of the Regulations under the Federal Power Act, pertaining to recreational development of project lands and waters:

(a) within six months following the date of issuance of this order a drawing illustrating the plan of development for the tailrace area to accommodate fishermen and other recreation users, and

(b) prior to construction, drawings illustrating any substantial changes in design of the functional type site plans for the licensees' recreational development sites which would materially alter the type, quality, or quantity of recreation service or opportunity provided.

*Article 51.* The Licensees shall file for information of the Commission, following preparation by the Forest Service, functional plans for the development of recreational use sites on Federally-owned lands within the Sabine National Forest serving project-created recreational opportunities.

*Article 52.* The Licensees shall construct and have available for public use, by the time the water surface reaches full pool in the process of initial Toledo Bend Reservoir filling, recreation facilities at the tailrace area, and at all other recreational use sites and facilities scheduled for development for use during the first year of project operation as specified in the Recreational Use Plan.

*Article 53.* The Licensees shall, not later than June 1, 1969, file for Commission approval as part of the Recreational Use Plan, a reservoir zoning plan which shall be prepared in cooperation with appropriate Federal agencies and with the Texas Park and Wildlife Department, the Louisiana State Parks and Recreation Commission, and the Louisiana Wildlife and Fisheries Commission. This plan shall include the reservation of project lands and waters for hunting, fishing, and other wildlife purposes after first considering areas reserved for general recreation, efficient operation of the project, and public safety.

*Article 54.* The Licensees shall, within one year following the date of issuance of this order, advise the Commission of their plans for financing the development, operation, maintenance and replacement of recreation facilities at the project for the first ten years of project operation.

(C) The Commission reserves the right to require such additional information as it may deem necessary.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensees and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP61-265 AND TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP61-299

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued April 24, 1967)

On February 28, 1967, El Paso Natural Gas Company (El Paso) filed in Docket No. CP61-265 a petition, as supplemented on March 31, 1967, to amend the order of the Commission issued in said docket on January 11, 1965, 33 FPC 36, and amended on February 21, 1966, 35 FPC 234, which order, as amended, authorized El Paso to construct and operate certain natural gas facilities and to deliver natural gas to Transwestern Pipeline Company (Transwestern) on an exchange basis, pursuant to an exchange agreement between the parties dated February 1, 1961, and amended on February 21, 1966,[1] all as more fully set forth in the petition to amend.

Specifically, El Paso requests that the order issued in Docket No. CP61-265, as amended, be amended further so as to authorize the delivery to Transwestern, under the terms of the aforementioned exchange agreement between the parties, of natural gas produced from the Buzzard No. 1-75 well, Ochiltree County, Texas, and the construction of natural gas facilities necessary to implement said delivery.

On March 8, 1967, Transwestern filed its companion petition in the instant proceeding requesting that the aforementioned order issued in Docket No. CP61-299, as amended, be amended further so as to authorize the construction and operation of a tap and valve to interconnect its existing gathering system with El Paso's proposed facilities; the receipt from El Paso, on an exchange basis, of gas produced from the Buzzard No. 1-75 well; and the operation of the facilities proposed to be constructed by El Paso for connection of said well; all as more fully set forth in the petition to amend.

El Paso proposes to construct approximately 0.8 miles of 4½-inch O.D. pipeline and necessary appurtenances extending from the Buzzard No. 1-75 well to a point of connection with Transwestern's existing gathering facilities together with a high pressure well tie and dehydration, measuring and regulating facilities, all in Ochiltree County, Texas.

Volumes of natural gas produced from the Buzzard No. 1-75 well will be purchased from the Sunset International Petroleum Corporation (Sunset). Sunset received authorization to sell natural gas to El Paso by order of the Commission issued in Docket No. CI61-356. On January 31, 1967, Sunset filed a petition to amend said order requesting authorization to add the Buzzard lease. Authorization to add said lease will be granted by the Commission by order issued in Docket No. CI61-356 concurrently with that issued in the instant proceeding.

The subject exchange of natural gas will be made pursuant to El Paso's FPC Rate Schedule X-12 and Transwestern's FPC Rate Schedule X-1. Under the terms of the exchange agreement between the parties, natural gas available to either company is delivered to the other if its facilities are closer to the source. Any imbalances in delivery volumes are accounted for by balancing at either of two points of interconnection in Beaver County, Oklahoma.

On March 20, 1967, El Paso filed an amended Exhibit A to its Rate Schedule X-12 to include the subject Buzzard No. 1-75 well and on March 23, 1967, Transwestern made a similar filing amending its Rate Schedule X-1.

The total estimated cost of El Paso's proposed construction is $18,400, which cost will be financed from cash on hand. The total estimated cost of Transwestern's proposed construction is $1,280, which cost will also be financed from cash on hand.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued in Docket Nos. CP61-265 and CP61-299 on January 11, 1965, and amended on February 21, 1966, be amended further as hereinafter ordered and conditioned.

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[1] By order issued on January 11, 1965, in Docket No. CP61-299, as amended by order issued on February 21, 1966, companion authorization was issued to Transwestern authorizing it to construct and operate certain natural gas facilities and to deliver natural gas to El Paso on an exchange basis, under said exchange agreement.

*The Commission orders:*

(A) The Commission's order issued in Docket Nos. CP61-265 and CP61-290 on January 11, 1965, and amended on February 21, 1966, is amended further so as (1) to authorize El Paso to deliver to Transwestern natural gas produced from the Buzzard No. 1-75 well, Ochiltree County, Texas, and to construct natural gas facilities necessary to implement said delivery; (2) to authorize Transwestern to construct and operate a tap and valve to interconnect its existing gathering system with El Paso's proposed facilities; (3) to receive from El Paso, on an exchange basis, natural gas produced from the Buzzard No. 1-75 well; and (4) to operate the facilities proposed to be constructed by El Paso for connection of said well; all as hereinbefore set forth and as more fully set forth in the respective petitions to amend.

(B) The authorization granted by paragraph (A) above is conditioned upon Petitioners' compliance with all applicable Commission Regulations and particularly the general terms and conditions set forth in paragraphs (c)(1). (c)(3), (c)(4), (f) and (g) of Section 157.20 of said Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by August 1, 1967.

(D) In all other respects said order, as amended, shall remain in full force and effect.

(E) The amendments filed by El Paso and Transwestern to their respective Rate Schedules X-12 and X-1 are accepted effective as of the dates of initial delivery of gas from Sunset's Buzzard No. 1-75 well and El Paso and Transwestern shall inform the Commission of the date on which said delivery begins.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP67-210

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 24, 1967)

On January 25, 1967, Michigan Wisconsin Pipe Line Company (Applicant), filed in Docket No. CP67-210 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant seeks authorization for the construction and operation of:

(a) 92.7 miles of 30-inch mainline loop between North Tepetate, Louisiana and Defiance, Ohio and 2,000 horsepower of compression at the existing Shelbyville, Indiana station.

(b) 55.1 miles of 24-inch loop line and a new 9,000 horsepower compressor station between Defiance, Ohio and Bridgman, Michigan to increase capacity between its mainline and its storage complex in west central Michigan.

(c) 38.5 miles of 30-inch loop line between Bridgman and the Michigan storage area.

(d) 34.7 miles of 20-inch to 26-inch loop line and 1,100 horsepower of compression on its South Louisiana gathering system.

(e) 4.7 miles of 30-inch line to loop the South Louisiana mainline crossing of Ford Lake near Detroit, Michigan.

(f) 4.2 miles of 10-inch loop on its Two Rivers, Wisconsin lateral.

(g) 30.3 miles of 30-inch mainline loop in Illinois and Wisconsin and 2,000 and 2,750 horsepower of compression, respectively in its Janesville and Germantown compressor stations in Wisconsin.[1]

Applicant proposes to increase peak day delivery capacity by 168,000 Mcf per day to a total of 2,600,660 Mcf per day and to increase sales for resale by 107,988 Mcf per day. The remaining 80,812 Mcf per day of unallocated capacity (60,012 Mcf in this application and 20,800 Mcf remaining from previous authorizations) will be used to supply pending and future requests for service under Section 7(a) and increasing demands of existing customers.

The proposed facilities will enable Applicant to transport and sell an additional 107,988 Mcf per day to 32 of its existing resale customers, each of which has executed a service agreement requesting the increased deliveries to be effective September 1, 1967. Present and proposed maximum daily quantities are shown by customer on attached Appendix A.

The total estimated cost of the proposed facilities is $35,923,000 which amount will be financed with funds on hand and interim short term bank loans.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed. Petitions for leave to intervene filed by North Central Public Service Co. on March 1, 1967, Wisconsin Fuel and Light Company on February 13, 1967, and Wisconsin Public Service Corporation on February 9, 1967, state the respective petitioners have no objection to the disposition of the proceedings under the shortened procedure provided by the Commission's rules and regulations.

At a hearing held on April 20, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

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[1] M-W states that if it receives timely approval of its application pending at Docket No. CP66-109, it will not construct facilities proposed in item (g).

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities and the sale and delivery of natural gas as hereinbefore described and as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

(D) Applicant shall file with the Commission revised service agreements covering the new authorized volumes set forth in Appendix A hereto.

(E) This certificate authorization is conditioned upon Applicant obtaining permission from the Commission before beginning actual construction of facilities related to the company's application in Docket No. CP66-109, *i.e.,* 30.3 miles of 30-inch loop line in Illinois and Wisconsin and 4,750 horsepower of compression in Wisconsin.

## APPENDIX A

### MICHIGAN WISCONSIN PIPE LINE COMPANY

***Present and proposed maximum daily quantities volumes—Mcf @ 14.73 psia***

| | Maximum daily quantity | | |
|---|---|---|---|
| | Present | Proposed[1] | Increase |
| Rate Schedule ACQ-1, MDQ-1 and LVS-1 customers: | | | |
| Michigan Consolidated Gas Company | 1,068,627 | 1,068,627 | |
| Michigan Gas and Electric Company | 59,750 | 62,628 | |
| Michigan Gas Utilities Company | 75,000 | 83,000 | 5,719 |
| Michigan Gas Utilities Company | 2,281 | Included in above | |
| Wisconsin Gas Company | 469,515 | 490,000 | 20,485 |
| Wisconsin Natural Gas Company | 188,000 | 202,000 | 14,000 |
| Madison Gas and Electric Company | 67,000 | 73,000 | 6,000 |
| Wisconsin Power and Light Company | 95,000 | 104,000 | 9,000 |
| Wisconsin Public Service Corporation | 161,000 | 176,000 | 14,373 |
| Wisconsin Public Service Corporation | 627 | Included in above | |
| Wisconsin Michigan Power Company | 44,000 | 47,000 | 3,000 |
| Wisconsin Fuel and Light Company | 44,300 | 45,000 | 700 |
| Iowa Southern Utilities Company | 38,840 | 40,290 | 1,450 |
| Keokuk Gas Service Company | 11,500 | 11,850 | 350 |
| North Central Public Service Company | 19,000 | 19,000 | |
| North Central Public Service Company | | 19,200 | 19,200 |
| Iowa Electric Light and Power Company | 6,724 | 6,937 | 213 |
| City of Bloomfield, Iowa | 1,750 | 1,875 | 125 |
| Allerton Gas Company | 680 | 680 | |
| City of Bethany, Missouri | 1,490 | 1,525 | 35 |
| Associated Natural Gas Company | 6,000 | 7,231 | 1,231 |
| City of Stanberry, Missouri | 667 | 670 | 3 |
| Ohio Valley Gas Corporation | 7,400 | 7,663 | 263 |
| Ohio Valley Gas Corporation | 1,091 | 1,091 | |
| Total | 2,370,242 | 2,469,267 | 99,025 |
| Rate Schedule SGS-1 customers: | | | |
| City Gas Company | 4,424 | 5,997 | 1,573 |
| Wisconsin Southern Gas Company | 1,018 | 1,120 | 102 |
| Illinois Power Company | 6,668 | 9,916 | 3,248 |
| City of Aledo, Illinois | 2,925 | 3,025 | 100 |
| City of New Boston, Illinois | 465 | 465 | |
| City of Lamoni, Iowa | 1,825 | 1,925 | 100 |
| Town of Morning Sun, Iowa | 585 | 612 | 27 |
| Wapello Light and Gas Company | 1,200 | 1,400 | 200 |
| Town of Winfield, Iowa | 800 | 806 | 6 |
| Town of Wayland, Iowa | 600 | 710 | 110 |
| City of Lineville, Iowa | 310 | 310 | |
| St. Joseph Light & Power Company | 8,756 | 10,100 | 1,344 |
| Northern Natural Gas Company | 3,833 | 4,332 | 499 |
| City of Grant City, Missouri | 951 | 951 | |
| City of Princeton, Missouri | 1,149 | 1,149 | |
| City of Unionville, Missouri | 1,867 | 1,867 | |
| City of Milan, Missouri | 1,592 | 1,592 | |
| City of Wetmore, Kansas | 329 | 329 | |
| Lincoln Natural Gas Co. Inc | 2,000 | 2,500 | 500 |
| Paris-Henry County P.U.D | 6,000 | 6,000 | |
| Northern Indiana Public Service Company | 5,304 | 5,300 | (4) |
| Consumers Natural Gas Corporation | 4,900 | 5,950 | 1,050 |
| Community Natural Gas Co. Inc | 482 | 590 | 108 |
| Northern Indiana Fuel and Light Company | 3,730 | 3,730 | |
| Town of Chrisney, Indiana | 313 | 313 | |
| West Ohio Gas Company | 392 | 392 | |
| Total | 62,418 | 71,381 | 8,963 |
| Total system | 2,432,660 | 2,540,648 | 107,988 |

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[1] To be effective September 1, 1967.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-50

### ORDER TO PRODUCE

(Issued April 24, 1967)

Pursuant to Opinion Nos. 510 and 510-A, issued December 23, 1966, 36 FPC 1107, and February 14, 1967, 37 FPC 314, respectively, the Commission remanded this matter to the Presiding Examiner for further hearings. Certain data was requested by Staff and the City of Fulton (Fulton) from Panhandle Eastern Pipe Line Company (Panhandle) which was refused. The Examiner ruled that Panhandle did not have to supply the data, and from this ruling Fulton has appealed. The requests will be considered one by one.

*Estimates of annual and peak-day requirements for the next three years of the Harbison-Walker Company (Harbison-Walker).*

The relevance of this data is that the Commission must determine (among other things) whether the capacity of the existing and proposed facilities will be sufficient to take care of the requirements of the customers on the line, of which Harbison-Walker is one. It may also be relevant in determining how costs should be apportioned if the facilities are improved or new facilities are installed.

Fulton further urges that Section 157.14(a)(11) of the Commission's Regulations requires that the data be submitted.

As against this Panhandle argues that it has not withheld any data in its possession, that currently available data as to Harbison-Walker's estimates has been provided, and that Panhandle has no three-year future estimates from Harbison-Walker. Panhandle argues that the current usage by Harbison-Walker is the best evidence of that customer's requirements. Panhandle further argues that Fulton did not request three-year future estimates for Harbison-Walker.

Whether or not *Fulton* requested three-year future estimates, the Staff did (see Tr. 1257). Fulton's appeal is from the Examiner's ruling on this request by Staff. The contract between Panhandle and Harbison-Walker provides for Harbison-Walker's furnishing of estimates of their expected use. Counsel for Panhandle stated (Tr. 1258): "I might explain that as a practical matter Harbison-Walker has never done this. As far as I am aware they are not equipped to make this type of study. I think the reason for the provision in the contract is normally Panhandle estimates industrial usage for each customer and they do this primarily on the basis of historical use which you have now from the first two items we have distributed. The provision in the contract provides for the company to make or the industry to make this estimate in case they have new facilities or something of that sort that Panhandle is not familiar with. In that instance, we are entitled to call on the company to make that estimate, but historically they never have made that estimate and historically Panhandle has never requested such an estimate from them."

As the requested data is clearly relevant, we think that Panhandle should produce it to the extent Panhandle already has it or has the right to obtain it.

*Data as to the original cost and accumulated depreciation of the Fulton and Crawfordsville laterals and costs of operation and maintenance of each.*

Fulton states:

> The City seeks to obtain the original cost and accumulated depreciation records with respect to the existing Fulton lateral for use in conjunction with its feasibility analyses of the various proposals for new lateral facilities. If the existing lateral has been completely paid for by the existing customers, this could bear on the available revenues for any new facilities to serve the customers on the lateral. This certainly is within the scope of the issues for which the Commission requested further evidence in the remanded proceeding.
>
> Furthermore, the requested evidence on operation and maintenance costs on the Fulton lateral is relevant to a determination whether Panhandle is discriminating against the City in its lateral line policy. In its present expansion application, Docket No. CP67-170, Panhandle proposes to abandon a six-inch 15.3-mile line on its Crawfordsville lateral (built around the same time as the Fulton lateral) because of high operation and maintenance costs. The City seeks the operation and maintenance costs in both instances to determine if Panhandle is in fact discriminating among its present customers as to lateral line policy. (Appeal, p. 4)

Panhandle argues that these items are not relevant. It states that it has already provided estimates of the operation and maintenance costs for the Fulton lateral, and that it knows of no records which reflect historical data for the Fulton lateral alone.

Panhandle also states that Fulton is in error in asserting that Panhandle is replacing the Crawfordsville lateral because of high operation and maintenance costs.

We think the records and other data requested with respect to the Fulton lateral may be relevant for the reasons stated by Fulton. The data requested as to the Crawfordsville lateral may also be relevant to the question of discrimination among customers in lateral line policy. A final determination as to the relevance of given material cannot be made until the material itself is disclosed. Panhandle should be required to produce any of the requested material as is available.

*Evidence as to the third-year requirements of customers on other laterals for which Panhandle proposes looping facilities.*

Panhandle's only objection is that the material is already in Fulton's hands since it is contained in the application in Docket No. CP66-170. The material is clearly relevant since it relates to possible discrimination in Panhandle's lateral line policies between customers on different laterals. The Examiner's ruling (Tr. 1308) was on the ground that "I think this is going to take us too far afield in this hearing." Opinion No. 510 indicated that discrimination in lateral line policy was a matter to be explored in this proceeding. Panhandle will be ordered to supply any data it has on this subject which is not already in Fulton's possession.

*All correspondence, memoranda, and the like between Panhandle and H. K. Porter Company, Inc. (Porter) relating to service to Porter's Fulton plant and to the contract between Panhandle and Porter.*

This request is opposed by both Panhandle and Porter. It does not appear the data requested would be relevant to the issues here, and the request is denied.

*The original records with respect to the description and location of pipe valves and fittings in the Fulton lateral.*

The relevance of the general information does not appear to be questioned. Panhandle has furnished certain data to Fulton, but what Fulton asks here are the original records. Panhandle seems to say that, in respect to much of this, there are no original records. To the extent such records do exist, Fulton should be allowed to inspect them.

*The Commission orders:*

(A) Panhandle Eastern Pipe Line Company shall produce all records, memoranda, or other data, including work papers and sources, which it has in its possession or subject to its control or which it can obtain by reason of contract or other means not equally available to Staff and the City of Fulton, from others in relation to the following:

(a) Estimates of annual and peak day gas requirements for the next three years of the Harbison-Walker Company from the Fulton lateral.

(b) The original cost, accumulated depreciation, costs of operation and costs of maintenance of the Fulton lateral and the Crawfordsville lateral.

(c) The third-year gas requirements of customers on other laterals for which Panhandle Eastern Pipe Line Company proposes looping facilities.

(d) Description and location of pipes, valves and fittings in the Fulton lateral.

(B) The request of the City of Fulton for the production of correspondence, memoranda and the like between Panhandle Eastern Pipe Line Company and H. K. Porter Company, Inc. is denied.

(C) The dates for the production of data, submission of evidence, hearing, and all other necessary proceedings shall be fixed by the Presiding Examiner.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP67-239

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 24, 1967)

On February 24, 1967, United Gas Pipe Line Company (Applicant) filed in Docket No. CP67-239 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale of quantities of natural gas for resale, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate approximately 40 feet of 2⅜-inch line, positive meter and regulator station and appurtenant facilities near milepost 27.3 on Applicant's 20-inch Carthage Compressor Station to Longview Compressor Station line, located in Gregg County, Texas. The purpose of the proposed construction is to supply natural gas to the City of Easton, Gregg County, Texas, for resale and distribution. Applicant estimates the third-year sales to the City of Easton at approximately 450 Mcf daily and 27,650 Mcf annually.

Applicant estimates the cost of the proposed construction at approximately $5,825, to be defrayed out of current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 20, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The proposed construction and operation of facilities and the sale and delivery of natural gas by Applicant to the City of Easton, Texas, as hereinbefore described, and as more fully described in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale and delivery of up to 450 Mcf per day of natural gas to the City of Easton, Texas, as described herein and as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) Applicant and the City of Easton, Texas, shall execute a service agreement in accordance with the Commission's Regulations reflecting the delivery point and volumes and the same shall be filed with the Commission by Applicant.

(D) The facilities authorized shall be constructed and placed in actual operation within one year of the date of this order as required by Section 157.20(b) of the Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## WEST TEXAS GATHERING COMPANY, DOCKET NO. CP67-120 AND NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-225

### FINDINGS AND ORDER AFTER STATUTORY HEARING

### ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 24, 1967)

On November 1, 1966, as supplemented on March 1, 1967, West Texas Gathering Company (Gathering Company) filed in Docket No. CP67-120 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport natural gas for the account of Northern Natural Gas Company (Northern) from points of delivery to it by producers, and to deliver such volumes to Northern, all as more fully set forth in the application and supplement thereto.

Gathering Company transports natural gas received by it from certain producers in Winkler County, Texas, for the account of Northern as follows:

| Well operator | Well name | Producer selling to Northern | Percent of production contracted to Northern |
|---|---|---|---|
| J. C. Barnes | Brown-Altman #1 | Tidewater Oil Co | 50.000 |
| Cities Service Oil Co | Cowden S-1 | Phillips Petroleum Co | 12.500 |
| Continental Oil Co | Brown-Altman Unit "38" #1 | Phillips Petroleum Co | 14.897 |
| Phillips Petroleum Co | Ernest #5 | Phillips Petroleum Co | 100.000 |
| Union Oil Co. of California | Cowden #1 | Phillips Petroleum Co | 25.000 |
| Shell Oil Co | McCabe #1, #2 and #3 | Phillips Petroleum Co | 50.000 |

The natural gas so received is transported through Gathering Company's facilities in Winkler County, Texas, and delivered to a measuring station located on Northern's 16-inch main line in the North Half of the Southeast Quarter of Section 15, Block B-5, P.S.L., Winkler County, Texas. The rate charged by Gathering Company for this service is 0.5 cents per Mcf. The transportation of said gas is pursuant to an agreement between Gathering Company and Northern dated January 28, 1959, as amended by letters dated March 9, 1959, April 14, 1959, January 24, 1961 and May 22, 1961, and has been filed with the Commission as Gas Gathering's Rate Schedule T-1.

On February 9, 1967, Northern filed in Docket No. CP67-225 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas with Gathering Company and continued operation of facilities, all as more fully set forth in the said application.

Northern requests authority for the continued operation of a side valve used to receive volumes of natural gas transported by and exchanged with Gathering Company in Winkler County, Texas.

The installed cost of the side valve is $1,757.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 20, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application supplementing data in Docket Nos. CP67-120 and CP67—225 and exhibits submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) West Texas Gathering Company, a Texas corporation having its principal place of business in Odessa, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 27, 1958, in Docket No. G–14302.

(3) The operation of facilities by Northern and the operation of facilities for the transportation of natural gas in interstate commerce by West Texas Gathering Company as hereinbefore described and as more fully described in the applications, supplement, and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid operation of facilities and transportation of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Northern and Gathering Company are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Northern's and Gathering Company's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of such Regulations.

(7) It is appropriate in the administration of the Natural Gas Act and in the public interest to accept for filing Gathering Company's Rate Schedule T–1, effective on the date of issuance of this order.

*The Commission orders:*

(A) Certificates of public convenience and necessity are issued to Northern and Gathering Company authorizing the continued operation of facilities, by Northern in Docket No. CP67–225 and the continued operation of facilities for the transportation of natural gas in interstate commerce, by Gathering Company in Docket No. CP67–120 as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Northern's and Gathering Company's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) Northern shall file within 30 days of the issuance of this order an appropriate rate schedule covering its deliveries to Gathering Company, in conformance with Commission Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITIES SERVICE GAS COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–89

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 25, 1967)

On March 1, 1967, Cities Service Gas Company (Cities Service) and Natural Gas Pipeline Company of America (Natural) filed in Docket No. CP64–89, a joint application to further amend the order of the Commission issued on January 2, 1964, 31 FPC 3, as amended on August 14, 1964, 32 FPC 618, and April 13, 1965, 33 FPC 724, authorizing Cities Service and Natural, among other things, to construct and operate certain facilities described therein, and to exchange up to 40,000 Mcf of natural gas daily for a period terminating May 1, 1967, under the terms of a Gas Exchange Agreement dated September 30, 1963, and amended April 13 and September 24, 1964.

The application to amend filed March 1, 1967 seeks modification of the Commission's said order so as to extend the period during which Cities Service and Natural may exchange natural gas pursuant to the Gas Exchange Agreement dated September 30, 1963, as amended, to May 1, 1970.

The principal purpose for this extension of the gas exchange agreement is to accommodate Cities Service, enabling it to utilize excess capacity in its South of Blackwell System. Due to the steady decline of the availability of gas along Cities Service's South of Blackwell System, Cities Service has sufficient capacity to handle the volumes of gas received from Natural into this portion of its system and by this exchange arrangement will be able to utilize the unused capacity in this system to meet the growing demands of its present customers.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 17, 1967 (32 F.R. 4187). No protest or petition to intervene has been filed in this proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the order of the Commission issued on January 2, 1964, as amended on August 14, 1964, and April 13, 1965, be further amended so as to extend the period during which Cities Service and Natural may exchange natural gas to May 1, 1970.

*The Commission orders:*

(A) The order of the Commission issued on January 2, 1964, as amended on August 14, 1964, and April 13, 1965, is further amended so as to authorize the extension of the period during which Cities Service and Natural may exchange natural gas under their exchange agreement dated September 30, 1963, as amended, to May 1, 1970.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CORNELL OIL COMPANY, DOCKET NO. CS67-49

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING SMALL PRODUCER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 25, 1967)

On February 27, 1967, Cornell Oil Company filed in Docket No. CS67-49 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of Texas and New Mexico, all as more fully set forth in the application.

Applicant is not presently authorized to sell natural gas in interstate commerce from the Permian Basin area subject to the jurisdiction of the Commission; therefore, the certificate issued herein shall be effective on the date of initial delivery.

In accordance with the principles set forth in the order issued February 6, 1967, in *Rodman & Late, et al.*, Docket No. CS66-48, *et al.*, 37 FPC 281, Applicant herein, pending judicial review of Opinion No. 468, 34 FPC 159, will be permitted to file for above ceiling rates. However, before collecting an above ceiling rate, Applicant will be required to file a notice of change in rate and the basic contract, together with any amendments thereto, relating to such sale. Any such notice of change in rate will be subject to suspension pursuant to Section 4(e) of the Natural Gas Act.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on April 20, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon commencement of service under the authorization hereinafter granted.

(2) The sales of natural gas hereinbefore described, as more fully described in the application herein, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Applicant will be an independent producer of natural gas who is not affiliated with natural gas pipeline companies and has not made any jurisdictional sales during the preceding calendar year.

(5) The sales of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary

therefor, are required by the public convenience and necessity, and a small producer certificate of public convenience and necessity therefor should be issued as hereinafter ordered and conditioned.

*The Commission orders:*

(A) A small producer certificate of public convenience and necessity is issued upon the terms and conditions of this order authorizing the sale for resale and delivery of natural gas in interstate commerce by Applicant from the Permian Basin area of Texas and New Mexico, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission, and particularly,

(a) The subject certificate shall be applicable only to all future "small producer sales," as defined in Section 157.40(a)(3) of the Regulations under the Natural Gas Act, from the Permian Basin area;

(b) Sales shall not be at rates in excess of those set forth in Section 157.40(b)(1) of the Regulations under the Natural Gas Act; however, Applicant may file notices of changes in rate for any contractually authorized rates in excess of the ceiling rates, which increased rates shall be subject to suspension pursuant to Section 4(e) of the Natural Gas Act and subsequently may be rejected as of the date of filing, as provided by the Order Granting Relief issued February 6, 1967, in Docket No. CS66–48, *et al.*;

(c) Applicant shall file annual statements pursuant to Section 154.104 of the Regulations under the Natural Gas Act.

(C) The certificate granted in paragraph (A) above shall remain in effect for small producer sales until the Commission on its own motion or on application terminates said certificate because Applicant no longer qualifies as a small producer or fails to comply with the requirements of the Natural Gas Act, the regulations thereunder, or the terms of the certificate. Upon such termination, Applicant will be required to file separate certificate applications and individual rate schedules for future sales. To the extent compliance with the terms and conditions of this order is observed, the small producer certificate will still be effective as to those already included thereunder.

(D) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customers involved imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales subject to said certificate.

(E) The certificate issued herein shall be effective on the date of initial delivery.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## GEORGE D. GOULD, TRUSTEE, DOCKET NO. CS67-30

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING SMALL PRODUCER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, TERMINATING CERTIFICATE, AND CANCELLING FPC GAS RATE SCHEDULE

(Issued April 25, 1967)

On December 19, 1966, George D. Gould, Trustee (Applicant) filed in Docket No. CS67-30 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of Texas and New Mexico, all as more fully set forth in the application.

Applicant has not heretofore been authorized to sell natural gas in interstate commerce subject to the jurisdiction of the Commission but proposes to continue that sale of natural gas heretofore authorized in Docket No. CI63-1378 to be made pursuant to Melba Jean Davis Greenlee FPC Gas Rate Schedule No. 1. Therefore, the small producer certificate issued herein will be effective as of March 1, 1966, the date of transfer of the producing properties from Greenlee to Applicant; the certificate issued in Docket No. CI63-1378 will be terminated; and Greenlee's FPC Gas Rate Schedule No. 1 will be cancelled.

In accordance with the principles set forth in the order issued February 6, 1967, in *Rodman & Late, et al.*, Docket No. CS66-48, *et al.*, 37 FPC 281, Applicant herein, pending judicial review of Opinion No. 468, 34 FPC 159, will be permitted to file for above ceiling rates. However, before collecting an above ceiling rate Applicant will be required to file a notice of change in rate and the basic contract,[1] together with any amendments thereto, relating to such sale. Any such notice of change in rate will be subject to suspension pursuant to Section 4(e) of the Natural Gas Act.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on April 20, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, submitted in support of the authorization sought herein, and upon consideration of the record,

***The Commission finds:***

(1) Applicant will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon commencement of service under the authorization hereinafter granted.

(2) The sales of natural gas hereinbefore described, as more fully described in the application herein, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

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[1] If Applicant proposes to charge and collect an above ceiling rate pursuant to the contract comprising the Greenlee rate schedule, he should file for reinstatement of that rate schedule together with a notice of change in rate.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Applicant will be an independent producer of natural gas who is not affiliated with natural gas pipeline companies and has not made jurisdictional sales during the preceding calendar year exceeding 10,000,000 Mcf of natural gas.

(5) The sales of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and a small producer certificate of public convenience and necessity therefor should be issued as hereinafter ordered and conditioned.

*The Commission orders:*

(A) A small producer certificate of public convenience and necessity is issued upon the terms and conditions of this order authorizing the sale for resale and delivery of natural gas in interstate commerce by Applicant from the Permian Basin area of Texas and New Mexico, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission, and particularly,

(a) The subject certificate shall be applicable only to all future "small producer sales," as defined in Section 157.40(a)(3) of the Regulations under the Natural Gas Act, from the Permian Basin area;

(b) Sales shall not be at rates in excess of those set forth in Section 157.40(b)(1) of the Regulations under the Natural Gas Act; however, Applicant may file notices of changes in rate for any contractually authorized rates in excess of the ceiling rates, which increased rates shall be subject to suspension pursuant to Section 4(e) of the Natural Gas Act and subsequently may be rejected as of the date of filing, as provided by the Order Granting Relief issued February 6, 1967, in Docket No. CS66-48, *et al.*;

(c) Applicant shall file annual statements pursuant to Section 154.104 of the Regulations under the Natural Gas Act.

(C) The certificate granted in paragraph (A) above shall remain in effect for small producer sales until the Commission on its own motion or on application terminates said certificate because Applicant no longer qualifies as a small producer or fails to comply with the requirements of the Natural Gas Act, the regulations thereunder, or the terms of the certificate. Upon such termination Applicant will be required to file separate certificate applications and individual rate schedules for future sales. To the extent compliance with the terms and conditions of this order is observed, the small producer certificate will still be effective as to those sales already included thereunder.

(D) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved.

Nor shall the grant of the certificate aforesaid for service to the particular customers involved imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales subject to said certificate.

(E) The continuation of the sale of natural gas by Applicant heretofore authorized to be made in Docket No. CI63–1378 pursuant to Melba Jean Davis Greenlee FPC Gas Rate Schedule No. 1 is approved as of March 1, 1966; the small producer certificate issued herein shall be effective as of that date; and the certificate issued in Docket No. CI63–1378 is terminated and the related rate schedule cancelled.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

## SOUTHERN NEW MEXICO OIL CORPORATION AND TREBOL DRILLING COMPANY, DOCKET NO. RI65–35

### ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING REFUNDS, TERMINATING PROCEEDING IN PART, NAMING SUBSTITUTE RESPONDENT, AND ACCEPTING SURETY BOND

(Issued April 25, 1967)

On March 6, 1967, Southern New Mexico Oil Corporation (Southern New Mexico) submitted an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving a sale of natural gas to El Paso Natural Gas Company (El Paso) under Southern New Mexico's FPC Gas Rate Schedule No. 1 in the Lusk Deep Unit area in Lea and Eddy Counties, New Mexico. On August 2, 1964, Southern New Mexico began charging and collecting from El Paso an increased rate of 15.5¢ per Mcf of natural gas at 14.65 psia, subject to refund, which had been suspended for the statutory period by order of the Commission in Docket No. RI65–35.

Southern New Mexico was included in the show cause order issued by the Commission on August 5, 1965, 34 FPC 424, in Docket No. AR61–1, *et al.*, which directed the producers named to show cause why its Opinion Nos. 468 and 468–A issued in such proceeding, 34 FPC 159, 1068, should not apply to them. Under the Commission's Opinion and order, Southern New Mexico would have qualified as a small producer and the applicable area base rate would be 14.459337¢ per Mcf of natural gas at 14.65 psia.

On August 1, 1966, Southern New Mexico sold and conveyed to Trebol Drilling Company (Trebol) all of the leasehold rights and properties dedicated to its sale of natural gas under its FPC Gas Rate Schedule No. 1. Thereafter, Trebol filed its application for a certificate of public convenience and necessity to make the subject sale to El Paso, and a motion to be substituted as respondent in the above-docketed proceeding. On January 17, 1967, the Commission issued an order substituting Trebol as the producer-seller of natural gas to El Paso in lieu of Southern New Mexico. However, since said order did not make Trebol respondent in the instant proceeding, we shall do so herein, and shall also accept its surety bond for the increased rate, charged and collected subject to refund herein subsequent to August 1, 1966. Southern New Mexico's proposed settlement does not cover Trebol.

Southern New Mexico proposes a settlement rate of 14.459337¢, the applicable area base ceiling under Opinion No. 468 and agrees to make refunds of all amounts collected in excess thereof in Docket No. RI65-35. Southern New Mexico estimates that it will refund El Paso approximately $57,024.56 in principal, plus $4513.36 in interest, which it computes to March 31, 1967. However, we shall require Southern New Mexico to compute the applicable interest on the refund monies to the date of the issuance of this order.

Southern New Mexico makes no other sales of natural gas subject to the jurisdiction of this Commission, and we find approval of its offer of settlement to be in the public interest.

*The Commission orders:*

(A) The offer of settlement filed by Southern New Mexico on March 6, 1967, as conditioned herein, is approved.

(B) Southern New Mexico shall compute the difference between 15.5¢ per Mcf and 14.459337¢ per Mcf of natural gas at 14.65 psia for the period August 2, 1964 through July 31, 1966, with applicable interest to the date of issuance of this order, and shall refund said monies collected subject to refund in Docket No. RI65-35 to El Paso within thirty days of the date of issuance of this order, and ten days thereafter shall file with the Commission a report showing the amount of refunds (showing separately the principal and applicable interest) and the basis used for such determination, and a release from El Paso acknowledging the receipt of the refunds and agreeing to the correctness of such amounts.

(C) The proceeding in Docket No. RI65-35, insofar as it pertains to Southern New Mexico, will be terminated upon its compliance with the terms and conditions of this order without further action of the Commission.

(D) Trebol is hereby substituted for Southern New Mexico as respondent in the proceeding in Docket No. RI65-35, as of August 1, 1966, and its surety bond applicable to monies charged and collected, subject to refund, from El Paso for sales of natural gas under its FPC Gas Rate Schedule No. 1 since August 1, 1966, is accepted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING, ET AL. (OTHER SOUTHWEST AREA), DOCKET NO. AR67-1, ET AL.

### ORDER ON MOTIONS FOR RECONSIDERATION AND CLARIFICATION

(Issued April 26, 1967)

By motions filed by Continental Oil Company (Continental) on March 27, 1967, Pan American Petroleum Corporation and Sunray DX Oil Company (Pan American, *et al.*) on March 29, 1967, Texaco Inc. and Mobil Oil Corporation (Texaco, *et al.*) on March 30, 1967, Atlantic Richfield Company, Dorchester Gas Producing Company and Magna Oil Corporation (Atlantic, *et al.*) on March 30, 1967, and Humble Oil & Refining Company (Humble) on March 31, 1967, respondents in the above-entitled proceeding, reconsideration and clarification are requested of the Commission's Order Instituting Area Rate Proceeding issued on February 28, 1967, 37 FPC 400.[1] In the main the motions are concerned with the provision in the order which directs the Presiding Examiner to incorporate by reference all the evidence adduced in the joint record in the Hugoton-Anadarko—Texas Gulf Coast proceedings. The order provided that "specific portions of the joint record may be excluded upon a clear showing of irrelevance or immateriality." It further provided that evidence may be presented on any new issues not raised in the joint record and supplemental data or opinions which are not cumulative or repetitive would also be permitted. While non-repetitive testimony or cross-examination would be allowed on new issues or on matters incorporated by reference, the proceeding essentially would be limited to new evidence respecting area conditions, area costs and rate design.

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[1] The motions filed by Pan American, *et al.*, Texaco, *et al.*, Atlantic, *et al.*, and Humble are styled as being applications for rehearing under Section 19(a) of the Natural Gas Act. However, applications for rehearing are not properly directed to an interlocutory order such as is here under consideration and accordingly the motions are being treated as motions for reconsideration.

Continental urges that the "only criteria for restriction of evidence should be relevancy and materiality and duplication" and that the Commission should "make clear that all relevant and nonduplicative evidence will be admissible." As indicated, the order provides that the exclusions from the record will be based upon a clear showing of irrelevance or immateriality. Furthermore, evidence supplementing that already received and evidence which is directed to new issues or relates to area conditions, area costs and rate design would be admissible so long as it met the criteria of relevance, competence, and materiality.

Pan American, *et al.*, contends in its motion that the order could be interpreted as an incorporation by reference of findings of fact as distinguished from incorporation by reference of evidence. Texaco, *et al.*, Atlantic, *et al.*, and Humble likewise claim that the order could be interpreted as meaning that findings or decisions would be incorporated by reference. The order clearly refers only to the evidence adduced and does not refer to findings of fact or decisions by the presiding examiners in other proceedings. Consequently, the record as developed in the instant proceeding will consist of applicable portions of the joint record in the Hugoton-Anadarko—Texas Gulf Coast (not excluded by the Examiner), portions of the records in other proceedings incorporated by reference therein, supplemental and updated evidence permitted by the Examiner, and evidence on new issues and on area conditions, area costs, and rate design relating to the Other Southwest Area. Thus, whether or not parties to the instant proceeding were parties in the other proceedings, they will have the opportunity to urge the Examiner to make findings of fact and law based upon the record in this proceeding as developed either by incorporation by reference as supplemented or updated and such new relevant evidence as may be introduced. The Examiner will be free in his decision to make such findings and reach such conclusions as he deems appropriate based upon the entire record in this proceeding. He will not be bound by rulings, findings, or decisions made by the examiners in other proceedings, nor are such findings incorporated in this record. If, in the opinion of any of the parties, evidence was admitted in the aforesaid joint record which should have been excluded for reasons of irrelevance or immateriality and objections on these grounds were made and overruled by the presiding examiners in the other proceedings, the parties are free to urge before the Examiner in the instant proceeding that such material be excluded from the incorporation by reference. In making his rulings herein, the Examiner would not be bound by the prior rulings of other examiners.[2]

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[2] Accordingly, we delete from the February 28 order those portions thereof which may be inconsistent with our position herein. In the second full paragraph of page 401 of that order on line 9 "a retrial or" is deleted, and starting on line 19 ", absent new evidence, the same issues shall not be tried in this proceeding but that" is also deleted.

Pan American, *et al.*, urges that the Commission order should provide that the Presiding Examiner may divide the hearing into "revenue requirements and rate design phases." The conduct of the hearings and any phasing thereof is strictly within the province of the Presiding Examiner. If, in his determination, the hearing will be handled most expeditiously by the phasing of the hearings, he is in the best position to so order.

*The Commission orders:*

The motions filed by Continental, Pan American, *et al.*, Texaco, *et al.*, Atlantic, *et al.*, and Humble for reconsideration and clarification of the order issued herein on February 28, 1967, are denied except in the respects above set forth.

Commissioner Ross *not participating.*

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## CONSOLIDATED OIL & GAS, INC., DOCKET NO. RI65-290

### ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, REQUIRING REFUNDS AND TERMINATING PROCEEDING

(Issued April 26, 1967)

On March 9, 1967, Consolidated Oil & Gas, Inc. (Consolidated) filed an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving an increased rate for sales of natural gas to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (TGP), from the Chesterville Field, Colorado County, Texas (Texas Railroad Commission District No. 3). Consolidated filed a rate increase from 13.7458¢ to 19.33333¢ per Mcf of natural gas at 14.65 psia, inclusive of tax reimbursement, which was suspended by order of the Commission for the statutory period, and thereafter made effective subject to refund by Consolidated on March 26, 1965.

Under the terms of the offer, Consolidated proposes to reduce its rate under its FPC Gas Rate Schedule No. 22, and to amend the same to provide for a life-of-contract rate of 15¢ per Mcf of natural gas.[1] Additionally, it will eliminate all price escalation provisions from said rate schedule, and the price redetermination and favored-nation clauses contained therein. Monies collected subject to refund under the instant sale, through April 1, 1967, will approximate $14,600 exclusive of interest.

We believe that Consolidated's settlement proposal, as modified herein, is in the public interest and shall approve the same. However, we desire to make it clear that acceptance of Consolidated's offer of settlement as modified herein is without prejudice to any findings or order of the Commission in any future proceeding involving Consolidated's rates and rate schedules. Additionally, for all of the reasons set forth in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49, we shall require Consolidated to deposit the refund monies in a special escrow account or to commingle the retained funds with its general assets pending future action of the Commission.

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[1] The rate under Consolidated's FPC Gas Rate Schedule is subject to a 0.21931¢ per Mcf of natural gas deduction for delivery of nondehydrated gas. Such deduction will also be applicable to the proposed settlement rate, and the computation of refunds.

*The Commission finds:*

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement, as modified herein, filed with the Commission by Consolidated on March 9, 1967, is consistent with the Statement of General Policy No. 61-1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

*The Commission orders:*

(A) The offer of settlement, as modified herein, filed with the Commission by Consolidated on March 9, 1967, is approved in accordance with the provisions of this order.

(B) Consolidated shall file, within 30 days from the date of issuance of this order, a notice of change in rate under its FPC Gas Rate Schedule No. 22 to reflect the settlement rate and an executed contractual amendment in accordance with the terms of its settlement proposal, as modified herein, and as approved herein. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Consolidated shall compute the difference between the rate collected subject to refund in Docket No. RI65-290 and the settlement rate of 15¢ per Mcf, less the 0.21931¢ dehydration deduction with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to TGP, setting out the amount of refunds (showing separately the principal and applicable interest) the basis used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from TGP agreeing to the correctness of such amounts.

(D) Consolidated shall retain the amounts shown in the report required under paragraph (C) above, subject to further action of the Commission directing the disposition of those amounts.

(E) Consolidated may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon TGP.

Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Consolidated and any bank or trust company used as a depository of funds of the United States Government and the Agreement shall be conditioned as follows:

(1) Consolidated, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short term indebtedness of the United States or any agency thereof, or in any form of obligation guaranteed by the United States which is, respectively,

payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be paid out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(F) If Consolidated elects to commingle the retained refunds with its general assets and use them for business purposes, it shall notify the Secretary of the Commission of its intention so to do within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 5½% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final ordre or orders of the Commission.

(G) Upon notification by the Secretary of the Commission that Consolidated has complied with the terms and conditions of this order, the proceeding in Docket No. RI65-290 shall terminate and the proposed 15¢ settlement rate, less the 0.21931¢ dehydration deduction shall become effective as of the date of issuance of this order, all without further order of the Commission.

(H) The acceptance by the Commission of Consolidated's offer of settlement, as modified herein, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Consolidated and is without prejudice to claims or contentions which may be made by Consolidated, the Commission Staff, or any affected party hereto, in any proceedings.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## LOUISIANA GAS SERVICE COMPANY AND TRUNKLINE GAS COMPANY, DOCKET NO. CP67-232

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued April 26, 1967)

On February 17, 1967, Louisiana Gas Service Company (Applicant) filed in Docket No. CP67-232 an application, as supplemented on March 6 and March 20, 1967, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 100 Mcf of natural gas per day for resale and distribution in the Village of Kilbourne, West Carroll Parish, Louisiana, all as more fully set forth in the application as supplemented.

Applicant proposes to construct and operate a distribution system and lateral pipeline totaling approximately 3.56 miles of 2-inch and 3-inch pipeline. Respondent will install necessary metering equipment.

By letter dated March 8, 1967, the authorities of the Village of Kilbourne state that they will grant Applicant a franchise to render the proposed service.

Applicant's estimated third-year annual and peak day natural gas requirements are 11,712 Mcf and 100 Mcf, respectively. Respondent will sell and deliver said gas requirements to Applicant pursuant to Respondent's presently effective Rate Schedule SG–1 at 35.6 cents per Mcf.

The total estimated cost of Applicant's proposed facilities is $40,637, which cost will be financed from company funds and, if necessary, from funds available under a five-year credit agreement with the Whitney National Bank of New Orleans.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

(1) Respondent, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) Applicant, Louisiana Gas Service Company, will receive authorization from the Village of Kilbourne to render the proposed service, and no state authorization is needed to implement said proposal.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 100 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 100 Mcf of natural gas per day to Applicant for resale and distribution in the Village of Kilbourne, West Carroll Parish, Louisiana, all as hereinbefore described and as more fully described in the application and supplements thereto.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ACCOUNTING AND REPORTING BY HYDROELECTRIC LICENSEES FOR EXPENDITURES RELATING TO FISH, RECREATION AND WILDLIFE, DOCKET NO. R-305

## ORDER NO. 343

### AMENDING THE UNIFORM SYSTEM OF ACCOUNTS AND ANNUAL REPORT F.P.C. FORM NO. 1

(Issued April 26, 1967)*

On July 14, 1966, the Commission gave notice (31 F.R. 9877, July 21, 1966) that it proposed to amend the Uniform System of Accounts for Class A and Class B public utilities and licensees and to add four new schedules for F.P.C. Form No. 1, prescribed for use by these public utilities and licensees by § 141.1 of its regulations. The object of these amendments is to enable the Commission and other interested agencies to evaluate the cost and effectiveness of fish, wildlife and recreation programs undertaken by the reporting licensees. Expenditures for these purposes are not now accounted for or reported separately.

Twenty-four responses commenting on the proposed amendments were received.[1] Five state agencies and the National Audubon Society supported the proposal, while 17 of the 18 remaining respondents (all licensees) opposed one or another aspect of the amendments. Five of the 17, however, indicated approval of the overall scheme. One licensee is already maintaining its accounts in the form contemplated by the amendments.

The Commission has considered the comments submitted and has adopted modifications responsive to certain of the objections expressed therein. While these modifications will reduce the complexity of the accounting and reporting as proposed, the modified amendments will still provide information adequate for the Commission's purposes.

Objections expressed in the responses centered largely on the accounting separation of expenditures and revenues for fish, wildlife and recreation activities, and on the proposal that depreciation reserves and accruals be reported in Form No. 1. The respondent licensees maintain that this accounting scheme would create unnecessary burdens and present difficult cost-allocation problems. The proposed reporting of depreciation reserves and accruals, also, was thought to present cost-allocation difficulties and to violate the functional classification of depreciation. While we believe that some breakdown of cost information is necessary if it is to be useful, the combining of fish and wildlife activities for accounting and reporting purposes appears to be feasible. Expenditures for wildlife activities will in most cases be small. This modification should reduce accounting and reporting paperwork by about a third without seriously affecting the utility of the information.

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*Published in the Federal Register on May 2, 1967 (32 F.R. 6678).

[1] Alabama Power Co., Allegheny Power Service Corp., Appalachian Power Co., Carolina Power & Light Co., Cleveland Electric Illuminating Co., Consumers Power Co., Georgia Power Co., Idaho Power Co., Iowa State Conservation Commission, Massachusetts Division of Fisheries and Game, National Audubon Society, Northern States Power Co., Oregon Fish Commission, Pacific Gas and Electric Co., Pacific Power & Light Co., Pennsylvania Fish Commission, Pennsylvania Power & Light Co., Philadelphia Electric Co., Public Service Electric & Gas Co., Southern California Edison Co., Union Electric Co., Virginia Electric & Power Co., Washington State Dept. of Fisheries, Wisconsin Michigan Power Co.

Accounting and reporting for depreciation would not violate the functional classification of depreciation, since the accounting proposed here would be maintained under the hydroelectric function. Nevertheless, the Commission agrees that eliminating the accounting and reporting requirement for depreciation would materially reduce the respondents' workload without impairing the usefulness of their reports. Depreciated cost of the facilities is not needed to evaluate the activities when gross cost figures are available.

Some respondents suggested that revenues from fish, wildlife and recreation activities are small enough that it would be proper to show them as offsets against expense in the appropriate operating or maintenance account. The Commission believes that the cost of operating these facilities can be accurately shown only if revenues and expenses are separately stated. Since in most cases recreation activities will provide most of the revenues, it would not detract significantly from the usefulness of the information to combine revenues from all three programs into a single subaccount. Accordingly, we have made this change in the amendments proposed.

Another modification suggested is the deletion of Item 12, referring to supplies and expenses for fish, game and forest conservation, from Account 537, Hydraulic Expenses. This item would be redundant under the new accounts prescribed and is being deleted as suggested.

Some respondents commented that the figures obtained under the accounting and reporting requirements here adopted will not permit the general public to know how effective the fish, wildlife and recreation programs are, because the costs of development will vary with the natural surroundings of each project. It is not intended, however, that these fiscal data be the only measure of effectiveness; rather they will be used to complement other information already available to the Commission.

Certain other comments and suggestions dealt with matters actually disposed of in the manner suggested either by the amendments here adopted or by existing provisions of the Uniform System of Accounts.

*The Commission finds:*

(1) The amendments to the Uniform System of Accounts and the Annual Report Form, prescribed herein, will provide the Commission with information important to the execution of its duties under the Federal Power Act with reference to the promotion of recreational use of licensed projects and the preservation of fish and wildlife in project lands and waters and, therefore, are necessary and appropriate for the administration of the Act.

(2) Since the modifications made to the amendments as originally proposed reduce and simplify the reporting obligation laid upon licensees, no further notice prior to adoption is necessary under section 4 of the Administrative Procedure Act.

*The Commission*, acting pursuant to the Federal Power Act, as amended, and particularly sections 301, 304, and 309 thereof (49 Stat. 854, 855, 858; 16 U.S.C. 825, 825c, 825h) *orders:*

(A) Effective upon the issuance of this order, the Uniform System of Accounts Prescribed for Class A and Class B Public Utilities and Licensees by Part 101, Subchapter C of Chapter I, Title 18 of the Code of Federal Regulations is amended by revising Electric Plant Instruction 8C, adding a new

Electric Plant Instruction 15, and revising Accounts Nos. 330, 331, 332, 335, 336, 398, 456, 537, 542, 543 and 545 to read as follows:

ELECTRIC PLANT INSTRUCTIONS

* * * * * * *

8. Structures and Improvements.

* * * * * * *

C. Minor buildings and structures, such as valve towers, patrolmen's towers, telephone stations, fish and wildlife, and recreation facilities, etc., which are used directly in connection with or form a part of a reservoir, dam, waterway, etc., shall be considered a part of the facility in connection with which constructed or operated and the cost thereof accounted for accordingly.

* * * * * * *

15. *Hydraulic Production Plant.*

For the purpose of this system of accounts hydraulic production plant means all land and land rights, structures and improvements used in connection with hydraulic power generation, reservoirs, dams and waterways, water wheels, turbines, generators, accessory electric equipment, miscellaneous power plant equipment, roads, railroads and bridges, and structures and improvements used in connection with fish and wildlife, and recreation.

* * * * * * *

ELECTRIC PLANT ACCOUNTS

* * * * * * *

330 Land and land rights.

This account shall include the cost of land and land rights used in connection with hydraulic power generation. (See electric plant instruction 7.) It shall also include the cost of land and land rights used in connection with (1) the conservation of fish and wildlife, and (2) recreation. Separate subaccounts shall be maintained for each of the above.

331 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with hydraulic power generation. (See electric plant instruction 8.) It shall also include the cost in place of structures and improvements used in connection with (1) the conservation of fish and wildlife, and (2) recreation. Separate subaccounts shall be maintained for each of the above.

332 Reservoirs, dams and waterways.

This account shall include the cost in place of facilities used for impounding, collecting, storage, diversion, regulation, and delivery of water used primarily for generating electricity. It shall also include the cost in place of facilities used in connection with (1) the conservation of fish and wildlife, and (2) recreation. Separate subaccounts shall be maintained for each of the above. (See electric plant instruction 8C.)

* * * * * * *

335 Miscellaneous power plant equipment.

This account shall include the cost installed of miscellaneous equipment in and about the hydroelectric generating plant which is devoted to general station use and is not properly includible in other hydraulic production accounts. It shall also include the cost of equipment used in connection with (1) the conservation of fish and wildlife, and (2) recreation. Separate subaccounts shall be maintained for each of the above.

336 Roads, railroads and bridges.

* * * * * * *

Note A: Roads intended primarily for connecting employees' houses with the power plant, and roads used primarily in connection with fish and wildlife, and recreation activities, shall not be included herein but in account 331, Structures and Improvements.

* * * * * * *

398 Miscellaneous equipment.

* * * * * * *

Items

* * * * * * *

3. Employees' recreation equipment.

OPERATING REVENUE ACCOUNTS

* * * * * * *

456 Other electric revenues.

This account shall include revenues derived from electric operations not includible in any of the foregoing accounts. It shall also include in a separate subaccount revenues received from operation of fish and wildlife, and recreation facilities whether operated by the company or by contract concessionaires, such as revenues from leases, or rentals of land for cottages, homes or campsites.

OPERATION AND MAINTENANCE EXPENSE ACCOUNTS

* * * * * * *

537 Hydraulic expenses.

This account shall include the cost of labor, materials used and expenses incurred in operating hydraulic works including reservoirs, dams and waterways, and in activities directly relating to the hydroelectric development outside the generating station. It shall also include the cost of labor, materials used and other expenses incurred in connection with the operation of (1) fish and wildlife, and (2) recreation facilities. Separate subaccounts shall be maintained for each of the above.

Items

* * * * * * *

12. Transportation expense.

[Codification note: item 12 deleted and item 13 renumbered 12.]

* * * * * * *

542 Maintenance of structures.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of hydraulic structures, the book cost of which is includible in account 331, Structures and Improvements. (See operating expense instruction 2.) However, the cost of labor, materials used and expenses incurred in the maintenance of fish and wildlife, and recreation facilities, the book cost of which is includible in account 331, Structures and Improvements, shall be charged to account 545, Maintenance of Miscellaneous Hydraulic Plant.

543 Maintenance of reservoirs, dams and waterways.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of plant includible in account 332 Reservoirs, Dams and Waterways. (See operating expense instruction 2.) However, the cost of labor, materials used and expenses incurred in the maintenance of fish and wildlife, and recreation facilities, the book cost of which is includible in account 332, Reservoirs, Dams and Waterways, shall be charged to account 545, Maintenance of Miscellaneous Hydraulic Plant.

* * * * * * *

545 Maintenance of Miscellaneous hydraulic plant.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of plant, the book cost of which is includible in account 335, Miscellaneous Power Plant Equipment, and account 336, Roads, Railroads and Bridges. (See operating expense instruction 2.) It shall also include the cost of labor, materials used and other expenses incurred in the maintenance of (1) fish and wildlife, and (2) recreation facilities. Separate subaccounts shall be maintained for each of the above.

(B) Effective for the reporting year 1967, Annual Report F.P.C. Form No. 1, prescribed for Class A and Class B electric utilities and licensees by §141.1, Subchapter D, of the said Chapter I of Title 18 is amended by adding new schedules entitled "Fish and Wildlife and Recreation Plants" (page 403A) and "Operation and Maintenance Expenses of Fish and Wildlife and Recreation Operations" (page 416A), and by revising the schedule entitled "Miscellaneous Service Revenues and Other Electric Revenues" (page 416), all as set out in *Attachment A* hereto.*

(C) Effective upon the issuance of this order, in paragraph (d) of the said § 141.1, the list of schedules is revised by—

1. Inserting, to follow the line "Electric Plant in Service", a new line reading:

"Fish and Wildlife and Recreation Plants."

2. Inserting, to follow the line "Miscellaneous Service * * * Revenues", a new line reading:

"Operation and Maintenance Expenses of Fish and Wildlife and Recreation Operations."

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-244

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued April 26, 1967)

On March 1, 1967, Southern Natural Gas Company (Applicant), filed in Docket No. CP67-244 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon certain natural gas facilities, all as more fully set forth in the application.

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*Omitted in printing.

Applicant requests permission and approval to abandon a field sale and to remove a field sales meter and regulator on Applicant's Tinsley Field branch line in the vicinity of an oil well known as the Ben Hanley Well, Yazoo County, Mississippi.

Applicant had a gas sales contract with Billy Bridewell (Bridewell) who used natural gas in the operation of an oil well which has ceased to produce. The parties terminated their sales contract by letter agreement, effective December 1, 1966.

Applicant states that no service now being rendered will be affected by the abandonment of the above-mentioned facilities.

*The Commission finds:*

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

*The Commission orders:*

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, is granted to Applicant, Southern Natural Gas Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP67-172 AND U.S. NATURAL GAS CORPORATION, DOCKET NO. CI62-594

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 27, 1967)

On December 16, 1966, U.S. Natural Gas Corporation (U.S. Natural) filed in Docket No. CI62-594 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Mountain Fuel Supply Company (Mountain Fuel) certain natural gas facilities located in the Joyce Creek Field, Sweetwater County, Wyoming, all as more fully set forth in the application.

On December 16, 1966, Mountain Fuel filed in Docket No. CP67-172 its companion application, as supplemented on March 2, 1967, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition from U.S. Natural and operation of the subject facilities.

Specifically, U.S. Natural seeks to abandon by sale to Mountain Fuel approximately 2.7 miles of 4-inch pipeline extending southwesterly from U.S. Natural's well in the Joyce Creek Field, Sweetwater County, Wyoming, to a connection with Mountain Fuel's 20-inch lateral supply pipeline also located in Sweetwater County.

By a bill of sale dated September 30, 1966, U.S. Natural sold and conveyed its interest in the subject facilities to Mountain Fuel in consideration of the sum of $20,037.72, which sum is equivalent to the original cost of the facilities.

Mountain Fuel proposes to continue the operation of the subject facilities and to continue its purchase of natural gas from U.S. Natural at 12 cents per Mcf in accordance with the gas purchase contract on file with the Commission as U.S. Natural's FPC Gas Rate Schedule No. 1. U.S. Natural will continue the sale of gas under its certificate heretofore issued in Docket No. CI62-594.

After due notice, no protest, petition to intervene, or notice of intervention has been filed herein.

At a hearing held on April 20, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued in Docket No. G-313 on March 9, 1943 (3 FPC 938).

(2) Applicant, U.S. Natural Gas Corporation, a Delaware corporation having its principal place of business in Beverly Hills, California, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued in Docket No. G-3083, *et al.*, on January 15, 1963.

(3) The facilities to be abandoned, as hereinbefore described and as more fully described in the applications in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) The abandonment of facilities by U.S. Natural Gas Corporation, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(5) The proposed acquisition and operation of facilities by Mountain Fuel Supply Company are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) Said acquisition and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Mountain Fuel Supply Company is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Mountain

Fuel Supply Company's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) Permission for and approval of the abandonment by U.S. Natural Gas Corporation of the facilities hereinbefore described, all as more fully described in the applications filed in this proceeding, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant, Mountain Fuel Supply Company, authorizing the acquisition and operation of facilities as hereinbefore described, as more fully described in the applications in this proceeding, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of the Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS GAS UTILITIES COMPANY, DOCKET NO. CP67-72

### FINDINGS AND ORDER AUTHORIZING THE EXPORTATION OF NATURAL GAS

(Issued April 27, 1967)

On September 19, 1966, Texas Gas Utilities Company (Applicant) filed in Docket No. CP67-72, as supplemented on December 2, 1966, an application pursuant to Section 3 of the Natural Gas Act for authorization to continue, as successor to Border Pipe Line Company (Border), the exportation of natural gas to the Republic of Mexico by sale to American Smelting and Refining Company (Smelting) for use by the latter's Mexican subsidiary, Compania Minera Asarco, S.A., all as more fully set forth in the application, as supplemented, in this proceeding.

The Commission's order issued October 10, 1942, in Docket No. G-228, as amended,[1] among other things, authorized Border to export up to 14,000 Mcf of gas per day by sale to Smelting in accordance with and pursuant to the terms of their agreement of July 5, 1949, as amended. Such authorization is to terminate on March 26, 1970. Pursuant to an assignment dated June 29, 1966, Border assigned and conveyed to Applicant its (Border's) interest in the sale to Smelting. Accordingly, Applicant now requests authorization to continue, as Border's successor, the exportation of natural gas.

On September 19, 1966, Applicant also filed, in Docket No. CP67-73, an application pursuant to Executive Order No. 10485 for a Permit to continue, as successor to Border, the operation, maintenance and connection of natural gas transmission facilities at or near the international boundary between the United States and Mexico for the purpose of exporting natural gas as proposed, and as hereinabove described. Said related Permit will be released concurrently with the issuance of this order.

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[1] The order of October 10, 1942 (3 FPC 827) as amended by orders issued November 4, 1942 (3 FPC 859), July 11, 1950 (9 FPC 910), May 10, 1956 (15 FPC 1387), March 25, 1960 (23 FPC 529) and March 26, 1965 (33 FPC 640).

Notice of the filing of the instant application was issued on September 28, 1966. This notice fixed October 24, 1966, as the last day for filing protests or petitions to intervene. Opportunity for hearing has been given by the issuance of said notice and the publication thereof in the Federal Register on October 5, 1966 (31 F.R. 12974). No petition to intervene, notice of intervention or protest has been filed in this proceeding.

*The Commission finds:*

The continued exportation of natural gas to Mexico by Applicant, Texas Gas Utilities Company, as successor to Border Pipe Line Company, by sale to American Smelting and Refining Company will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act provided that said exportation be continued on the terms and conditions hereinafter set forth and ordered.

*The Commission orders:*

(A) Applicant, Texas Gas Utilities Company, is authorized to continue, as successor to Border Pipe Line Company, the exportation of natural gas to Mexico by sale to American Smelting and Refining Company, in accordance with the terms of the contract dated July 5, 1949, as amended, hereinbefore described, upon the terms and conditions of this order and subject to the provisions of the Natural Gas Act and the Commission's Regulations issued thereunder.

(B) The quantities of natural gas Applicant is authorized in paragraph (A) above to continue to export by sale to American Smelting are limited to 14,000 Mcf (14.65 psia) per day, and, further, such authorization is limited to a term ending March 26, 1970.

(C) The authorization granted in paragraph (A) above to Applicant, as successor to Border, is subject in all respects to the terms and conditions of the Commission's order issued October 10, 1942, as amended, in Docket No. G–228.

(D) Applicant shall file by March 31 of each year a report on its previous year's operations showing:

(1) Total volumes (at 14.73 psia) exported by months.

(2) The maximum daily volume (at 14.73 psia) exported in each month and the date thereof.

(3) The total annual revenue received for the gas exported.

(E) The related Permit in Docket No. CP67–73 is released concurrently with the issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED FUEL GAS COMPANY, DOCKET NO. CP64–73

### ORDER AMENDING AN ORDER ISSUING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 27, 1967)

On February 9, 1967, United Fuel Gas Company (Petitioner) filed in Docket No. CP64–73 a petition to amend the order issued by the Commission in said docket on June 19, 1964, 31 FPC 1559. By the instant filing, Petitioner requests that the subject order be amended so as to authorize an increase in its firm sale and delivery of natural gas to Gas Transport, Inc. from the presently authorized 6,500 Mcf to 7,500 Mcf per day, all as more fully set forth in the application.

The order issued in the subject docket on June 19, 1964, authorized Petitioner to construct and operate a delivery facility on its 8-inch pipeline near its Rockport Compressor Station in Wood County, West Virginia, connecting its system with a 14-inch pipeline owned and operated by Gas Transport, Inc., and used to supply natural gas to its parent company Anchor Hocking Glass Company in Lancaster, Ohio. This tie-over line was constructed for the purpose of delivering up to 6,500 Mcf of natural per day into Gas Transport's system under Petitioner's CDS-1 Rate Schedule.

By letter dated January 12, 1967, Gas Transport requested Petitioner to increase the contract demand for natural gas to 7,500 Mcf per day citing increased need and declining local supply.

No change in rates is proposed and no additional facilities or financing will be required to implement Petitioner's proposal.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in the instant docket on June 19, 1964, be amended as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on June 19, 1964, in Docket No. CP64-73 is amended so as to authorize an increase in Petitioner's firm sale and delivery of natural gas under its Rate Schedule CDS-1 to Gas Transport Inc., from 6,500 Mcf to 7,500 Mcf per day, as hereinbefore set forth and as more fully set forth in the petition to amend filed in this proceeding.

(B) The authorization granted by paragraph (A) above is conditioned upon Petitioner's filing with the Commission an appropriate revised service agreement with Gas Transport Inc., in accordance with the Commission's Regulations under the Natural Gas Act.

(C) The authorization granted by paragraph (A) above is further conditioned upon Petitioner's notifying the Commission of the commencement of the increased service authorized herein within 10 days thereof.

(D) In all other respects the certificate issued in the subject docket shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## JACK W. GRIGSBY (OPERATOR), ET AL., DOCKET NOS. RI61-96, RI62-536; SOCONY MOBIL OIL COMPANY, INC. (NOW MOBIL OIL CORPORATION), DOCKET NOS. G-12193, ET AL., G-12401; UNITED GAS PIPE LINE COMPANY, DOCKET NOS. RP61-18, RP63-1, RP65-1

### ORDER RELEASING REFUNDS

(Issued April 28, 1967)

Jack W. Grigsby (Operator), *et al.* (Grigsby) is presently retaining certain monies refundable to United Gas Pipe Line Company (United) pursuant to the

Commission's order in Docket Nos. RI61-96 and RI62-536, issued August 6, 1964, 32 FPC 529. The retained amounts are attributable to gas sold under Grigsby's Rate Schedule Nos. 6 and 7 from February 26, 1961, to August 6, 1964, and under Rate Schedule No. 8 from December 2, 1962 to August 6, 1964.

The flow-through obligations of United and its jurisdictional customers are established as to those portions of the retained amount attributable to Grigsby's Rate Schedule Nos. 6 and 7, but not as to Grigsby's Rate Schedule No. 8. In accordance with our usual practice, therefore, we are authorizing Grigsby to release to United the amounts attributable to Rate Schedule Nos. 6 and 7, and directing Grigsby to continue its retention of the amount attributable to Rate Schedule No. 8.

Pursuant to our order of June 26, 1964, 31 FPC 1593, issued in Docket Nos. G-12193, *et al.*, and G-12401, Socony Mobil Oil Company, Inc. (Socony), has also been retaining amounts refundable to United. These monies are attributable to purchases of gas made by United under five of Socony's rate schedules. Although United has agreed to flow through amounts attributable to purchases made under four [1] of the five rate schedules, it claims a right to retain monies attributable to purchase made under the fifth.[2]

Accordingly, we are directing Socony to release to United those portions of the refunds escrowed pursuant to our June 26, 1964 order which are attributable to the four Socony rate schedules covered by United's obligations, and to continue its retention of monies attributable to the fifth.

We are directing United to flow-through the amounts released to it pursuant to this order in accordance with the plan of disposition set forth in our order issued January 4, 1967, in Docket Nos. RP61-18, RP63-1, and RP65-1, *et al.*

*The Commission orders:*

(A) Grigsby and its duly appointed escrow agent are authorized to release and pay over to United within 45 days from the date of this order the amounts (together with net escrow earnings) retained by Grigsby pursuant to our order of August 6, 1964, issued in Docket Nos. RI61-96, and RI62-536, and attributable to purchases made by United under Grigsby's Rate Schedule Nos. 6 and 7.

(B) Grigsby shall, pending further Commission order, continue its retention of monies attributable to United's purchases under Grigsby's Rate Schedule No. 8.

(C) Socony and its duly appointed escrow agent are authorized to release and pay over to United within 45 days from the date of this order the amounts (together with net escrow earnings) retained pursuant to the Commission's order of June 26, 1964, issued in Docket Nos. G-12193, *et al.*, and G-12401, and attributable to United's purchases under Socony's Rate Schedule Nos. 24, 69, 120, and 258.

(D) Socony shall, pending further Commission order, continue its retention of monies attributable to United's purchases under Socony's Rate Schedule No. 229.

(E) Grigsby and Socony, within 60 days from the date of this order, shall each submit to the Commission a report showing (1) the amounts paid to United in accordance with paragraphs (A) and (C) above, (2) the portion of such payments attributable to escrow account earnings, and (3) the amounts retained in accordance with paragraphs (B) and (D) above.

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[1] Rate Schedule Nos. 24, 69, 120, and 258.

[2] Rate Schedule No. 229.

(F) The amounts ordered to be retained pursuant to paragraphs (B) and (D) above shall be retained by Grigsby and Socony in accordance with the respective methods previously adopted by the two companies.

(G) United shall flow through the refunds received pursuant to paragraphs (A) and (C) above in accordance with the method prescribed in the Commission's order of January 4, 1967, issued in Docket Nos. RP61-18, RP63-1, RP65-1, *et al.*

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## INTERSTATE POWER COMPANY, DOCKET NO. E-7345

### ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS AND OF COMMON STOCK

(Issued April 28, 1967)

Interstate Power Company filed an application on March 16, 1967 for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of the following securities: (1) $17,000,000 principal amount of First Mortgage Bonds, and (2) 267,897 shares of Common Stock, par value $3.50 per share.

Applicant is incorporated under the laws of the state of Delaware with its principal business office at Dubuque, Iowa and is engaged in the electric utility business in three counties in Illinois, 21 counties in Iowa, 21 counties in Minnesota and one county in South Dakota.

The proposed $17,000,000 principal amount of First Mortgage Bonds are to be dated May 1, 1967, and are to mature on May 1, 1997. The interest rate will be determined by the most favorable bid received and accepted.

The new Bonds are to be issued under the Applicant's Indenture dated as of January 1, 1948, to The Chase National Bank of New York and Carl E. Buckley, Trustees, as amended and supplemented by ten supplemental indentures and to be further amended and supplemented by a proposed Eleventh Supplemental Indenture to be dated as of May 1, 1967. The new Bonds will be redeemable at the option of the Applicant, as a whole or in part at any time, at regular and special redemption prices.

The Applicant proposes on or about May 5, 1967, to publish an invitation for sealed, written bids for the purchase of the $17,000,000 new Bonds. The Statement of Terms and Conditions Relating to Bids will contain the following principal provisions:

> Each bid must be for the purchase of all the Bonds and may be made by a single bidder or by a group of bidders. Bids must be presented to the Applicant before 11:00 a. m., New York Time, on May 16, 1967, at the office of The Chase Manhattan Bank (National Association), Room 2414, One Chase Manhattan Plaza, New York, N. Y., and be accompanied by deposits of $510,000.
>
> Each bid shall specify: (1) the coupon rate which shall be a multiple of ⅛ of 1%; (2) the price (exclusive of accrued interest) to be paid to the Applicant, which price shall not be less than 99% nor more than 102¾% of principal amount thereof; and (3) and shall further provide that accrued interest from May 1, 1967 to the date of payment and delivery will be paid to the Applicant by the purchaser or purchasers.

> Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Statement of Terms and Conditions Relating to Bids, it will accept the bid which provides for the lowest annual cost of money.

The Applicant proposes to offer to the holders of its outstanding Common Stock of record at 3:30 p.m., New York Time, on May 17, 1967, the right to subscribe for a total of 267,897 additional shares of its presently authorized Common Stock, on the Primary Subscription Right basis of one additional share for each fourteen shares of Common Stock held. The rights to subscribe will be evidenced by a single form of transferrable Subscription Warrant expressed in terms of Rights, the number of Rights evidence by each Warrant being equivalent to the number of shares of the Applicant's Common Stock held of record on the record date by the stockholder. In addition to the Primary Subscription Right, the Warrant holders whose holdings of rights are not evenly divisible by fourteen or are less than fourteen will have an Incidental Subscription Right. Also, each Warrant holder, in addition to shares covered by the Warrants, will have the conditional right to subscribe, as a Secondary Subscription Right (Over-subscription), for any shares covered by outstanding Warrants which are not issued pursuant to exercise of the Primary Subscription Rights. The rights to subscribe will expire at 3:30 p.m., New York Time, on June 2, 1967.

On or about May 5, 1967, the Applicant proposes to invite sealed, written bids for the purchase of such of the 267,897 shares of its Common Stock as shall not be subscribed for under the offering to the stockholders. The subscription price per share will be fixed by the Applicant's Board on May 15, 1967, and such price will be furnished to prospective bidders on the same day. According to the application the subscription price will be fixed in relation to and at an appropriate discount from, the then market price of Applicant's presently issued and outstanding Common Stock.

Each bid must be for the purchase of the entire Unsubscribed Stock and may be made by a single bidder or by a group of bidders. Each price shall specify: (a) the price per share to be paid to the Applicant for the Unsubscribed Stock, which price shall be the same as fixed by the Applicant's Board, and (b) the aggregate amount to be paid by the Applicant to the bidder or bidders as compensation for their commitments and obligations in connection with the purchase of the Unsubscribed Stock. Each bid must be delivered to the Applicant at the office of The Chase Manhattan Bank (National Association), Room 2414, One Chase Manhattan Plaza, New York, N. Y., before 11:30 A. M., New York Time, on May 17, 1967. Each bid must be accompanied by a deposit of $50,000.

If any bid is accepted, it will be the "best bid." This "best bid" shall be the bid which specifies the lowest aggregate amount of compensation to be paid by the Applicant to the bidder or bidders. Immediately after opening of bids, the Applicant will file with the Commission an amendment which gives the results of the competitive bidding.

The proceeds from the sale of the new Bonds and the additional shares of Common Stock will be used first, to discharge $16,000,000 in outstanding promissory notes and secondly, towards payment of the $13,478,000 construction program of the Applicant for 1967. The principal item in this program is the completion of Applicant's Milton L. Kapp generating plant (Unit No. 2) at Clinton, Iowa, which will require an estimated expenditure of $1.7 million in 1967.

Written notice of the application has been given to the Commerce Commission of Illinois, the Minnesota Railroad and Warehouse Commission, the South Dakota Public Utilities Commission, and the State Commerce Commission of Iowa and the Governor of each of those States. Notice has also been given by publication in the Federal Register on March 30, 1967 (32 F.R. 5387), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before April 10, 1967, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 12, 1959, *In the Matter of Interstate Power Company,* Docket No. E-6877 (21 FPC 678).

(2) The proposed issuance and sale of Bonds, and Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issues here involved are regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities are, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, and Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed issuance and sale of Bonds, and Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds and the proposed issuance and sale of Common Stock in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof, the price per share to be received by Applicant for the Common Stock and the amount of any compensation for underwriters to be paid by Applicant in connection with the Common Stock.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7277

### SUPPLEMENTAL ORDER AMENDING ORDER AUTHORIZING THE ISSUANCE OF PROMISSORY NOTES

(Issued April 28, 1967)

By order issued April 4, 1966, 35 FPC 455, in the above-entitled matter, the Commission, pursuant to Section 204 of the Federal Power Act, authorized Iowa Southern Utilities Company (Applicant) to issue up to $20,000,000 short term notes outstanding at any one time. The notes were to be issued to Continental Illinois National Bank and Trust Company of Chicago (Bank) under a Revolving Credit Agreement dated March 18, 1966. They were to be issued from time to time, with maturities of up to six months after dates, but not later than October 31, 1967. The interest rate was not to exceed the prime rate at the time of borrowing on the first $15,000,000, and not over ¼% above such rate on the balance. Applicant now has notes outstanding in the total amount of $3,900,000.

On March 6, 1967, Applicant filed an Amendment to its Application. In this Amendment, Applicant has requested that the Commission's order issued April 4, 1966, be amended so as to authorize the issuance of short term notes in accordance with an Amendment and Supplement to Revolving Credit Agreement dated September 9, 1966. Under this Amendment and Supplement to Revolving Credit Agreement, the Bank has agreed to lend to the Applicant, on or before September 30, 1968, such amounts as the Applicant may from time to time request, but not exceeding $15,000,000 outstanding at any one time. Each note will have a maturity of ninety days from its date of issuance. Borrowings subsequent to June 30, 1968 shall not exceed $3,000,000. If $3,000,000 in notes are outstanding on September 30, 1968, the Bank has agreed to establish a payment schedule of one payment of $2,000,000 on December 31, 1969 and one payment of $1,000,000 on December 31, 1970.

The Amendment and Supplement to Revolving Credit Agreement also provides that Applicant is required to issue and sell not less than $8,000,000 long term debt on or before June 30, 1967, and apply the net proceeds to the payment of all notes then outstanding; and on or before June 30, 1968, the Applicant is required to discharge not less than $10,000,000 in notes by the application of proceeds of additional long-term debt or other available funds.

The notes are to bear interest at the prime rate in effect at the time of each borrowing, except all notes outstanding on the earlier to occur of the date of the retirement of not less than $10,000,000 of notes on or before June 30, 1968, or on June 30, 1968, shall bear interest until maturity at a rate of ¼ of 1% above the Bank's prime rate then in effect.

Applicant states that the proceeds from the promissory notes will be used to finance Applicant's construction program which has a total estimated cost of $35,943,000 for three years, 1966, 1967 and 1968. The largest item in this program is $25,185,000 for the 212 mw Burlington Generating Station.

Written notice of the amendment to the application has been given to the Iowa State Commerce Commission and the Governor of that State. Notice has also been given by publication in the Federal Register on March 17, 1967 (32 F.R. 4187), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before March 30, 1967, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

Good cause has been shown and it is necessary and appropriate for the purposes of the Federal Power Act, that Paragraphs (A) and (C) of the Commission's order issued April 4, 1966, be modified as hereinafter provided.

*The Commission orders:*

(A) Paragraphs (A) and (C) of the Commission's order issued April 4, 1966, in the above-entitled docket are amended to read as follows:

> (A) The proposed issuance of Promissory Notes in the aggregate principal amount of $15,000,000, outstanding at any one time, upon the terms and conditions and confined to the purposes specified in the Application as filed March 10, 1966 and as amended March 6, 1967, is hereby authorized, subject to the provisions of this order.
>
> (C) This authorization is expressly conditioned upon the final maturity of all notes over and above the amount of $3,000,000 being not later than June 30, 1968 and the final maturity of the balance of said notes not to exceed $3,000,000 being not later than December 31, 1970.

(B) All other terms and conditions, as set forth in Paragraphs (B), (D) and (E) of the Commission's order issued April 4, 1966 shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING, ET AL. (OTHER SOUTHWEST AREA). DOCKET NO. AR67-1, ET AL.

### ORDER DENYING MOTION TO DELETE RESPONDENT

(Issued May 1, 1967)

By motion filed on April 13, 1967, El Paso Natural Gas Company (El Paso), seeks to be deleted as a party-respondent in these proceedings. El Paso urges in support of the motion that during 1966 it had two relatively small purchases in the Other Southwest Area and consequently its operations in the area were of a *de minimis* nature. In seeking to be relieved of participating in the proceedings, El Paso refers to the Commission's order issued on August 22, 1966, 36 FPC 519, deleting Texas Gas Pipe Line Corporation (Texas Gas)* as a respondent in the Pipeline Production Area Rate Proceeding, Docket No. RP66-24 on the ground that the company's activities were of a *de minimis* nature in relation to the matters covered by that proceeding. El Paso's reference to that order has no application here since the Pipeline Production proceeding is concerned primarily with natural gas production by pipeline companies and it appeared, among other things, that Texas Gas had no natural gas production. The order instituting these proceedings stated that the pipeline purchasers were joined as parties-respondent since the proceedings related to contracts theretofore entered by the pipeline purchasers. While El Paso may presently have relatively small purchases in the Other Southwest Area, it is appropriate that it remain as a party-respondent herein. Of course, the degree of participation, either individually or through a common interest group, by any respondent in the proceedings is determined by each party.

*The Commission orders:*

The motion filed by El Paso to be deleted as a party-respondent to this proceeding is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65-393

### ORDER GRANTING REHEARING ON COMMISSION'S OWN MOTION

(Issued May 1, 1967)

On March 31, 1967, the Public Service Commission of the State of New York filed a Notice of Intervention in the above-entitled proceeding, a Motion for Permission to File Belated Notice of Intervention, and an Application for

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* Incorrectly referred to by movant as Texas Gas Transmission Corporation.

Rehearing of the Commission's Opinion No. 516 and order issued March 1, 1967, 37 FPC 424. On April 11, 1967, the staff filed a response, contending that the filing of its Notice did not effect automatically the New York Commission's intervention, but that the Commission should authorize such intervention. On April 19, 1967, the Florida Gas Transmission Company and Florida Power & Light Company filed answers in which they contended that the Notice of Intervention and Application for Rehearing should both be rejected. The Florida Public Service Commission filed an answer on April 20, 1967, taking a similar position.

As a condition to our issuance of the requested certificate we directed the Florida Gas Transmission Company, in paragraph (B)(4) of our March 1, 1967 order, to establish within 30 days "that the MMBtu purchase contract of March 12, 1965, is still effective." By letter of March 31, 1967, Florida Gas advised us that the gas purchase contract was still effective and accepted certification of the facilities at issue. However, along with that acceptance Florida Gas forwarded to the Commission a copy of a letter dated March 28, 1967, in which Pan American advised Florida Gas, the Florida Power & Light Company, and Austral Oil Incorporated that the parties had agreed "that the MMBTU Purchase Contract shall be reinstated and fully in effect upon the aforesaid order of March 1, 1967 becoming legally final and no longer subject to administrative or judicial review as of Midnight, March 31, 1967." The letter also provided that "if any condition exists after Midnight, March 31, 1967, which will have the effect of prolonging the certificate proceedings in Docket No. CP65-393, the contract shall not be considered reinstated." In view of that transmittal, it is unclear as to whether the condition in our order has been complied with and whether there still is available to the project the supply of gas upon which our certification was based.

In order to resolve this question before taking further action we shall grant rehearing on our own motion. By this action Florida Gas will have the opportunity to inform us as to compliance with the condition in our order, particularly with respect to the exact status of the gas supply.

In view of this uncertainty as to the gas supply there is no necessity to act upon the New York Commission's Notice of Intervention or its Application for Rehearing until this question has been resolved, and we shall therefore defer action on the filings made by the New York Commission. By such deferral it is clearly intended that none of the rights, if any, of the New York Commission shall be adversely affected hereby.

*The Commission orders:*

(A) Rehearing is granted in the above-entitled matter.

(B) Within twenty days of this order, Florida Gas shall file a statement showing compliance with the condition in paragraph (B)(4) of the Commission's order of March 1, 1967 with respect to the continued effectiveness of the MMBtu Purchase Contract of March 12, 1965, including the present status of the proposed gas supply.

(C) Action on the New York Commission's Notice of Intervention and Application for Rehearing is deferred until further order of the Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NOS. CP67-181 AND CP67-221; KENTUCKY-TENNESSEE NATURAL GAS COMPANY, CP67-270; THE MAYOR AND ALDERMEN OF THE TOWN OF ALGOOD, TENNESSEE AND EAST TENNESSEE NATURAL GAS COMPANY, CP67-206

### ORDER CONSOLIDATING APPLICATIONS FOR HEARING AND DENYING REQUEST FOR TEMPORARY CERTIFICATE

(Issued May 2, 1967)

By application filed February 6, 1967, under Section 7(c) of the Natural Gas Act, East Tennessee Natural Gas Company (East Tennessee) seeks a certificate of public convenience and necessity authorizing the construction and operation of facilities adequate to increase East Tennessee's system capacity by approximately 28,000 Mcf/d in order to meet estimated requirements for the 1967-68 heating season and thereafter.

At the time East Tennessee's application was filed, we had pending before us the application filed January 23, 1967, by The Mayor and Aldermen of the Town of Algood, Tennessee (Algood), under Section 7(a) of the Natural Gas Act requesting an order directing East Tennessee to interconnect its facilities with and sell natural gas to Algood in lieu of Algood's present gas supply from the City of Cookeville. In response to Algood's application, Respondent, East Tennessee, stated that its present capacity is insufficient to meet Algood's request on a long-term basis, but that upon authorization of East Tennessee's requests in Docket No. CP67-221 such capacity would be available.

On March 21, 1967, Kentucky-Tennessee Natural Gas Company (Kentucky-Tennessee) filed an application pursuant to Section 7(c) of the Natural Gas Act to sell volumes of natural gas to Cumberland Valley Pipe Line Company, such volumes to be purchased by Kentucky-Tennessee from East Tennessee. East Tennessee's application in Docket No. CP67-221 includes a request to sell natural gas volumes to Kentucky-Tennessee.

Since the applications of Algood in Docket No. CP67-206 and Kentucky-Tennessee in Docket No. CP67-270 are dependent upon our disposition of East Tennessee's application in Docket No. CP67-221, these applications will be consolidated for hearing and disposition. The Presiding Examiner shall fix the dates for holding a prehearing conference, the commencement of hearing and for the service of testimony.

By application filed December 23, 1966, East Tennessee requested temporary authorization until November 1, 1967, to provide additional firm service of approximately 9,000 Mcf/d of natural gas to four resale and three direct sale customers. The issuance of such temporary authorization under Section 7(c) of the Natural Gas Act would be appropriate only to assure maintenance of adequate service during an emergency period. East Tennessee's application in Docket No. CP67-181, however, shows no evidence of emergency at present or until November 1, 1967, and we will accordingly deny East Tennessee's application for a temporary certificate. Nevertheless, East Tennessee will be afforded full opportunity in Docket No. CP67-221 to establish its need to increase firm service to the customers involved in Docket No. CP67-181.

*The Commission finds:*

(1) Disposition of the above-entitled dockets are dependent upon the Commission's disposition of East Tennessee's application in Docket No. CP67-221, and the dockets accordingly should be consolidated for hearing and disposition.

(2) East Tennessee has not shown in Docket No. CP67-181 an emergency within the meaning of Section 7(c) of the Natural Gas Act, and its request for a temporary certificate of public convenience and necessity accordingly should be denied.

*The Commission orders:*

(A) The above-entitled dockets are consolidated for hearing and disposition.

(B) The request of East Tennessee in Docket No. CP67-181 for a temporary certificate of public convenience and necessity is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-154

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 2, 1967)

On October 12, 1966, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP62-154 a petition, as supplemented on March 8, 1967, to amend the order of the Commission issued in said docket on October 17, 1962, 28 FPC 614, and amended on May 2, 1966, 35 FPC 664. By the instant filing Petitioner requests authorization to continue natural gas service on an interruptible, best efforts basis, to Southern California Gas Company and Southern Counties Gas Company of California (jointly referred to as Southern) by means of existing facilities under the terms of its presently effective G-X-2 Rate Schedule for a period extending from January 1, 1967, through October 31, 1968, all as more fully set forth in the petition to amend, as supplemented.

The order issued in the subject docket, as amended, authorized Petitioner to sell under its Rate Schedule G-X-2, FPC Gas Tariff, Original Volume No. 1, and deliver to Southern an annual volume of up to 63,000,000 Mcf of natural gas at 14.9 psia (63,725,000 Mcf at 14.73 psia) for a period ending December 31, 1966. Petitioner's Rate Schedule G-X-2 specifies a rate of 21.85 cents per Mcf at 14.73 psia.

Upon application filed on December 22, 1966, Petitioner was issued a temporary certificate on January 20, 1967, authorizing the delivery to Southern of up to an average daily quantity of 100,000 Mcf of G-X-2 gas until commencement of deliveries by Transwestern Pipeline Company (Transwestern) pursuant to authorization issued by the order accompanying Opinion No. 500, 36 FPC 176, or until the G-X-2 deliveries so authorized aggregate 12 billion cubic feet, whichever first occurs.

In its supplement of March 8, 1967, Petitioner expresses its willingness to accept an amended certificate conditioned to provide that the average daily sales of G-X-2 gas shall not exceed 100,000 Mcf. This volume approximates the average daily quantity that Southern's market can utilize. By letter dated February 24, 1967, Southern also indicates that it would be agreeable to such a condition.

Petitioner states that no new facilities are required to implement the instant proposal.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in the instant docket on October 17, 1962, as amended, be amended further as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on October 17, 1962, in Docket No. CP62–154, as amended, is amended further so as to authorize the continued sale under Petitioner's Rate Schedule G–X–2 and delivery of natural gas jointly to Southern California Gas Company and Southern Counties Gas Company of California for a period extending from January 1, 1967, through October 31, 1968, as hereinbefore set forth and as more fully set forth in the petition to amend and supplement thereto filed in this proceeding.

(B) The authorization granted by paragraph (A) above is conditioned as follows:

(1) The average daily sales of natural gas by Petitioner to Southern under Petitioner's G–X–2 Rate Schedule shall not exceed 100,000 Mcf at 14.73 psia;

(2) Petitioner shall file monthly reports setting forth the volumes of natural gas sold and delivered to Southern;

(3) Deliveries of natural gas by Petitioner to Southern shall be made only on those days when Pacific Lighting Service and Supply Company has taken 640,000 Mcf of gas from Transwestern Pipeline Company, when such quantities are available and

(4) Petitioner shall file with the Commission an appropriate revised service agreement with Southern in accordance with the Commission's Regulations under the Natural Gas Act.

(C) In all other respects the certificate issued in the subject docket, as amended on May 2, 1966, shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## FLORIDA POWER & LIGHT COMPANY, DOCKET NO. E–7210

### ORDER DENYING APPLICATION FOR REHEARING

(Issued May 2, 1967)

On March 20 1967, 37 FPC 544, the Commission issued Opinion No. 517 and accompanying order in the above-entitled proceeding. Application for rehearing of this Opinion and order has been timely filed under Section 313(a) of the Federal Power Act by the Florida Power & Light Company.

In Opinion No. 517 and order the Commission found that the Florida Power & Light Company (FPL) is a public utility within the meaning of that term as used in Section 201 of the Federal Power Act and subject to the jurisdiction of the Commission because FPL owns and operates facilities, among others, for the transmission of electric energy transmitted from points of generation in the States of Georgia and Florida to points of consumption outside the State in which it is generated. The Commission further found that these facilities are in addition to, and do not include, facilities used by FPL for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. The Commission ordered FPL to file original cost statements in the manner provided in Section 120.3 of the Commission's Regulations under the Federal Power Act and Electric Plant Instruction No. 1 of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. FPL was also ordered to comply with all requirements of the Commission's Regulations under such Act.

FPL requests that the Commission grant rehearing and thereafter issue a new order dismissing this proceeding on the merits, asserting that the Commission's findings as above described are without basis in law or in fact. In support of its application for rehearing, FPL lists numerous specific findings which it contends represent error on the part of the Commission.

Upon consideration of FPL's application the Commission finds that the arguments advanced by FPL are essentially the same as those set forth in its brief to the Examiner and in its exceptions to the Examiner's initial decision. These arguments were covered in the Examiner's decision and were rejected in the Commission's Opinion No. 517. No new facts or arguments are presented which would be cause for granting rehearing or disturbing the original Opinion and order.

*The Commission finds:*

The assignments of error and grounds for rehearing set forth in the above-described application for rehearing present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 517 and accompanying order on March 20, 1967, and which having now been considered warrant any change in or modification of said Opinion and order.

*The Commission orders:*

The application for rehearing filed by the applicant, Florida Power & Light Company, on April 11, 1967, is hereby denied.

Commissioners Carver and O'Connor *dissenting* for the reasons set forth in their dissent to Opinion No. 517 issued March 20, 1967.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP67-235

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 2, 1967)

On February 21, 1967, Kansas-Nebraska Natural Gas Company, Inc. (Applicant) filed in Docket No. CP67-235 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation of natural gas, all as more fully set forth in the application.

Applicant seeks authorization for the installation, construction and operation of the following facilities:

(1) 14.3 miles of 12-inch pipeline between the Huntsman Storage Field and the Sidney-Big Springs, Nebraska 12-inch line,

(2) 18.4 miles of 12-inch pipeline to parallel the existing 10-inch pipeline between Paxton and Hershey, Nebraska,

(3) 10.5 miles of 8-inch pipeline to parallel the existing 8-inch pipeline between Grand Island and Albion, Nebraska,

(4) 9.5 miles of 8-inch pipeline to parallel the existing 6-inch pipeline between Albion and Neligh, Nebraska,

(5) 1100 horsepower compressor addition to the Big Springs, Nebraska Compressor Station,

(6) 1100 horsepower compressor addition to the Albion, Nebraska Compressor Station, and

(7) 2700 horsepower compressor addition at the Holcomb, Kansas Compressor Station.

The proposed facilities will permit increased peak day withdrawals from Applicant's Huntsman Storage pool to offset declining wellhead pressures in the Hugoton field, and increase Applicant's transmission system capacity by approximately 7000 Mcf of natural gas per day which is needed to meet Applicant's forecasted 1967–1968 peak day market requirements.

The total estimated cost of Applicant's proposed construction is $1,860,000 of which Applicant states that the costs will be paid out of current working capital and, if necessary, interim bank loans.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 27, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(2) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce by Applicant as hereinbefore described and as more fully described in the application and supplement are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act. and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in para-

graphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, authorizing the construction and operation of facilities and the transportation of natural gas, all as more fully described in the application and exhibits thereto,

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, and the transportation of gas authorized in paragraph (A) above shall commence, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## LONE STAR GAS COMPANY, DOCKET NO. CP67-237

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued May 2, 1967)

On February 23, 1967, Lone Star Gas Company (Applicant) filed in Docket No. CP67-237 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon the operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant seeks permission and approval to abandon, remove and salvage the following pipelines and appurtenant facilities:

(1) 6,496 feet of 4-inch and 675 feet of 2-inch Line A-18-a,
(2) 1,635 feet of 4-inch Line A-18-3,
(3) 1,105 feet of 2-inch Line A-18-3-1,
(4) 5,151 feet of 3-inch Line A-18-4,
(5) 2,369 feet of 2-inch Line A-18-4-1,
(6) 2,639 feet of 2-inch Line A-18-7,
(7) 3,253 feet of 2-inch Line A-18-13
(8) 1,454 feet of 2-inch Line 71-23-1-1,
(9) 8,960 feet of 4-inch Line 71-23-1-3,
(10) 14,838 feet of 6-inch Line ED,
(11) 3,877 feet of 3-inch Line GN-35-T,
(12) 5,540 feet of 6-inch Line E5AA-A,
(13) 154 feet of 4-inch and 76 feet of 3-inch Line FX-476-T,
(14) 634 feet of 4-inch Line FX-506-T,
(15) 1,195 feet of 2-inch Line FX-529-T,

(16) 10,607 feet of 6-inch and 51 feet of 4-inch Line H-W,
(17) 3,341 feet of 6-inch Line GDH-A,
(18) 14,335 feet of 6-inch and 3,974 feet of 4-inch Line GDS-B,
(19) 3,740 feet of 6-inch Line FX 410-T, and
(20) 5,001 feet of 4-inch Line FX 427-T.

The above-listed lateral pipelines and related facilities are no longer needed or required to transport gas due to termination of sales of gas or the disconnection of depleted sources of gas supply and that the proposed abandonment would not result in any abandonment or diminution of natural gas service to any city, town or community.

Applicant has grouped the facilities proposed for abandonment into 20 projects. Nine of these projects, which are about 6.39 miles in length, comprise sales laterals located in Wichita County, Texas. Sales were principally to well-drilling or lease-operating customers. The well drilling has been completed and the related sales have been terminated.

The remaining eleven projects, consisting of laterals about 12.76 miles in length, are located in Grayson County, Texas and Cotton, Marshall and Stephens Counties, Oklahoma. The sources to which the gathering facilities were connected have either become depleted or their deliverability so declined that they have been disconnected from Applicant's system.

In project 10 (Line ED) and Project 17 (Line GDH-A) only the terminal portion of the lines will be abandoned. The remaining segment of the two lines will remain in place for the continued transportation of gas purchased by Applicant from other supply sources in the area.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on April 27, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Lone Star Gas Company a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G-442 (4 FPC 565).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

*The Commission orders:*

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## REPORTS BY NATURAL GAS COMPANIES OF CURTAILMENTS OF SERVICE TO INDUSTRIAL CUSTOMERS, DOCKET NO. R-321

## ORDER NO. 344

### REVISING THE SUPPLEMENTARY SCHEDULE 520A TO ANNUAL REPORT FPC FORM NO. 2

(Issued May 2, 1967)*

The schedule "Curtailments of Main Line Industrial Customers" required to be filed by natural gas pipeline companies as a supplement to their Annual Report FPC Form No. 2 requires the reporting of curtailments, the average daily delivery during the system 3-day peak period, and the maximum 24-hour delivery during the year to such customers.[1]

Our review and analysis of the information supplied in the initial submission of these reports discloses that the following revisions of the existing schedule are desirable.

1. Schedule 520A now requires the reporting, in columns (e) and (f), of the maximum 24-hour delivery made to each main line industrial customer during the year. In view of the claims by many companies that the review of their daily sales records required to obtain these peak deliveries is both time-consuming and a cost burden, and in light of the fact that the primary utility of the information would have been in connection with a method of cost allocation no longer under consideration, we have decided to eliminate the reporting of this information.

2. The information supplied in this schedule covers a report year which ends on each April 30 but because the data for the last month (April) is often not available until the date (May 15) the report is now required to be submitted, we are revising instruction 7. to change the filing date to June 15.

3. We have found, also, that the requirement, in instruction 1., to report in group totals the curtailment of small customers (less than 50,000 Mcf annually) can be deleted. Many companies have large numbers of such customers and their small size does not warrant daily metering so they were unable to supply the data. We find that the absence of this information has no appreciable effect on the usefulness of the report.

These three changes should reduce substantially the reporting burden, a result clearly in the public interest.

4. The schedule, pages 519–520 of FPC Form No. 2, was revised beginning with the report year 1966, to provide for the reporting of "Field and Main Line Industrial Sales of Natural Gas."[2] Since the schedule 520A supplements the schedule on pages 519–520 and, at the suggestion of some of the reporting companies, we are revising it to conform to the revision of the basic schedule by the addition of the words "Field and" to both the title and instruction paragraph 1. of the schedule.

The change is not only conformatory but clarifying, as well. Instruction 1. in the supplemental schedule 520A directs, in part, that

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* Published in the Federal Register on May 10, 1967 (32 F.R. 7051).

[1] The schedule was prescribed for inclusion in Form No. 2 by Order No. 300 in Docket No. R–243, issued June 24, 1965, 33 FPC 1286, 30 F.R. 8831, amended by Order No. 300–A, issued March 30, 1966, 35 FPC 451, 31 F.R. 5428.

[2] Order No. 310–B, issued December 22, 1966, in Docket No. R–283, 36 FPC 1144, 31 F.R. 16562.

> 1. The pipeline company shall report below particulars concerning curtailments of deliveries of natural gas to each customer identified in the preceding schedule * * *

*i.e.*, the schedule on pages 519-520 of Form No. 2 which, in Instruction 1., states, in pertinent part:

> 1. Report below particulars concerning sales of natural gas to industrial customers *served other than from local distribution systems* operated by the respondent. (Emphasis added)

Thus the revision here adopted makes it clear that curtailments of service to all industrial customers except those served from distribution lines are to be reported.

*The Commission finds:*

(1) It is necessary and appropriate for the administration of the Natural Gas Act that the supplementary schedule "Curtailments of Main Line Industrial Customers," page 520A of FPC Form No. 2, be revised as ordered herein.

(2) Since the amendments to the schedule ordered herein involve either a reduction in the reporting requirements or are of a clarifying nature and the information contained therein is not generally available to the public,[3] the notice and effective date requirements of section 4 of the Administrative Procedure Act are not applicable.

*The Commission*, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), *orders:*

(A) Effective upon the issuance of this order, FPC Form No. 2, prescribed by § 260.1, Chapter I, Title 18 of the Code of Federal Regulations, is amended by revising the supplementary schedule 520A thereto as follows:

1. The title is revised to read "Curtailments of Field and Main Line Industrial Customers."

2. In instruction paragraph 1., the matter in parenthesis is revised to read "(Field and Main Line Industrial Sales of Natural Gas)," and the third sentence, "Curtailments * * * by states.", is deleted.

3. Instruction paragraph 2. is revised to read:

> 2. All volumes should be stated in Mcf at 14.73 psia, 60° F.

4. Instruction paragraph 3. is revised by changing "(d), (e) and (g)." to "(d) and (e),".

5. Instruction paragraph 5. is revised by changing "column (g)" to "column (e)."

6. Instruction paragraph 6. is revised by changing "column (h)" to "column (f)" and deleting the last sentence thereof.

7. Instruction paragraph 7. is revised by changing "May 15" to "June 15."

8. The heading to and columns (e) and (f) are deleted and columns (g) and (h) are redesignated "(e)" and "(f)," respectively.

The schedule, as so revised, is appended hereto.

(Secs. 10, 16, 52 Stat. 826, 830; 15 U.S.C. 717l, 717o)

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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[3] See ordering clause (A) of Order No. 300-A, *supra*, note 1.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP67-252

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 2, 1967)

On March 6, 1967, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP67-252 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the 12 month period commencing May 30, 1967, and the operation of certain gas purchase facilities, all as more fully set forth in the application.

Applicant seeks authorization for the construction and operation of field facilities to enable it to attach to its certificated main pipeline system natural gas which will be purchased from authorized independent producers in the general area of its system.

The total estimated cost of Applicant's proposed facilities will not exceed $2,000,000, with no single project exceeding a cost of $500,000. Applicant proposes to finance said costs from funds on hand.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on April 27, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-859 (8 FPC 228).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas

Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the 12 month period commencing May 30, 1967, and the total expenditures thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Texas Gas Transmission Corporation, to construct during the 12 month period commencing May 30, 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the 12 month period following the issuance of this order and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## WEST OHIO GAS COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP67-245

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 2, 1967)

On March 1, 1967, West Ohio Gas Company (Applicant) filed in Docket No. CP67-245 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the incorporated communities of Willshire, Rockford, Ohio City, Haviland and Scott, and the unincorporated Village of Tipton, all in the State of Ohio, all as more fully set forth in the application.

The Village of Haviland is located approximately 3.75 miles due east of Respondent's main transmission line and the Village of Scott is located approximately 1½ miles south of Haviland. The unincorporated Village of Tipton is located adjacent to Respondent's main transmission line on the northwest side.

The Village of Willshire is located approximately 3.25 miles southeast of Respondent's main transmission line and the Village of Ohio City is approximately 9 miles generally east of Willshire. The Village of Rockford is approximately 5 miles south of Ohio City.

Applicant proposes that Respondent construct, pursuant to its "10-cent" formula, approximately 4.9 miles of 4-inch transmission lateral pipeline from its main transmission line, approximately 3.25 miles northwest of Willshire, to the connection with the proposed lateral pipeline of Applicant that will serve Willshire, Rockford and Ohio City, and, approximately 3.0 miles of 4-inch transmission lateral pipeline from its main transmission line, approximately 3.75 miles due west of Haviland, to the connection with the proposed lateral pipeline of Applicant that will serve Haviland and Scott. Applicant proposes to construct approximately 12.5 miles of pipeline to connect the first mentioned lateral with the proposed distribution systems of Willshire, Rockford and Ohio City, and to construct approximately 2.6 miles of pipeline to connect the next mentioned lateral with the proposed distribution systems of Haviland and Scott. Applicant also proposes to construct separate distribution systems in each of the aforementioned communities.

Applicant's estimated third year annual and peak day requirements are 246,324 Mcf and 1,722 Mcf of natural gas, respectively.

The estimated cost of Applicant's proposed project, in the first year of operation, is $488,337, said cost to be financed with internally generated funds and long-term debt.

On April 7, 1967, Respondent filed an answer to the application herein, stating that it has no objection to the issuance by the Commission of an order as requested by Applicant.

Due notice of the filing of the application was published in the Federal Register on March 16, 1967 (32 F.R. 4147). No protest, petition to intervene or notice of intervention has been filed.

*The Commission finds:*

(1) Respondent, Michigan Wisconsin Pipe Line Company, a Delaware corporation with its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) Applicant, West Ohio Gas Company, a corporation organized and existing under the laws of the State of Ohio, is authorized to construct and operate facilities and distribute and sell natural gas as proposed.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transmission facilities with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 1,722 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP67-243

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued May 3, 1967)

On February 27, 1967, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP67-243 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas purchase facilities, all as more fully set forth in the application.

Specificaly, Applicant seeks authorization for the abandonment of its field lines and appurtenances thereto constructed to take gas for the account of United Fuel Gas Company (United Fuel) from properties in the following fields in Louisiana:

| Field | Parish | Producer | Lines to be abandoned |
|---|---|---|---|
| Deep Lake | Cameron | Texas Pacific Oil Co. (successor to The Calvert Distilling Co., d/b/a Frankfort Oil Co.), *et al.* | 6,330 feet of 6-inch line. |
| Ellis | Acadia | Forest Oil Corp., *et al* | 6,328 feet of 4-inch line. |
| Do | do | Humble Oil & Refining Co | 6,521 feet of 3-inch line and Measuring Station. |
| Go Around Bayou | Cameron | Kerr-McGee Corp., *et al* | 7,300 feet of 6-inch line. |

Said facilities were constructed and service therefrom was initiated pursuant to authorization granted by orders issued in Docket Nos. G-12375, G-9900. G-2058 and G-17550.

Applicant cites the following as reasons for its proposed abandonment of the subject facilities:

(1) The Texas Pacific Oil Company (Texas Pacific) well which is connected to the gas purchase facilities proposed to be abandoned, is no longer capable of production.[1]

(2) Forest Oil Corporation, *et al.* (Forest Oil), pursuant to an agreement with United Fuel, has changed its delivery point to the outlet of the Egan Processing Plant of San Jacinto Corporation and therefore the present gathering facilities are no longer required.

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[1] Texas Pacific is delivering gas to Applicant from other producing properties in the Deep Lake Field under the same rate schedule now on file with the Commission.

(3) Gas Production of Humble Oil & Refining Company (Humble) and Bateman Drilling Company, *et al.* (Bateman) from the Ellis Field has ceased and all leases have expired.[2]

(4) Kerr-McGee Corporation, *et al.* (Kerr-McGee) and Humble have abandoned all their wells in the Go Around Bayou Field for lack of production and the leases on which these wells are located have expired.[3]

Applicant transports gas for United Fuel under Applicant's cost of service Rate Schedule T-1. The effect of the proposed abandonment of facilities will be reflected in the rate charged.

With the exception of certain valves located above ground, the subject facilities will be abandoned in place due to the prohibitive cost of salvaging.

The costs associated with the proposed abandonment are as follows:

| | |
|---|---|
| Original cost | $136, 897 |
| Cost of retirement | 2, 800 |
| Total cost | 139, 697 |
| Less salvage value | 1, 900 |
| Net charge to depreciation reserve | 137, 797 |

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on April 27, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 5, 1958, in Docket No. G-15529 (20 FPC 681).

(2) The facilities to be abandoned, as hereinbefore described, and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted upon the terms and conditions of this order.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

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[2] Humble filed an abandonment application in Docket No. CI66-596 and the Commission granted permission to abandon by order dated March 7, 1966. Bateman and United Fuel signed a cancellation agreement dated August 25, 1966, and Bateman has been requested to file an abandonment application for its wells in the Ellis Field, Acadia Parish, Louisiana.

[3] Humble's Rate Schedule No. 145 has been cancelled. Kerr-McGee has been requested to file an abandonment application for its wells in the Go Around Bayou Field, Cameron Parish, Louisiana.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRUNKLINE GAS COMPANY, DOCKET NO. CP67-101 AND THE CAMINO CORPORATION (FORMERLY CAMINO OIL CORPORATION), DOCKET NO. CI67-613

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued May 3, 1967)

On October 17, 1966, Trunkline Gas Company (Applicant) filed an application and supplement thereto filed December 27, 1966, in Docket No. CP67-101 pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon the sale of natural gas by it from production of which it is part owner, to Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application and supplement thereto.

Applicant states that due to the rapid decrease in the reservoir pressure in the Luby Field Area in Nueces County, Texas, which will require the installation of compression facilities, the presence in excess of three-tenths grain of hydrogen sulphide per 100 cubic feet (quality specification in Transco contract), and the termination of the contract term (September 12, 1966), it is not economically feasible for Applicant to install compression and desulphurization facilities to continue the sale to Transco.

Applicant's sale to Transco is presently being made under its FPC Gas Rate Schedule F-4 (authorized in Docket No. CP62-281). Upon receipt of the requested authorization Applicant will file a notice of cancellation of the related Rate Schedule.

On October 20, 1966, The Camino Corporation (Camino) filed an application in Docket No. CI67-613, pursuant to Section 7 of the Natural Gas Act to abandon the sale and delivery of natural gas to Transco from the Luby Field in Nueces County, Texas, District No. 4, in which acreage Trunkline (Applicant herein) has a 50% interest. Camino's sale was authorized in Docket No. CI62-992. Transco does not oppose the abandonment requested, and has executed an agreement cancelling its contract with Camino. The related Notice of Cancellation of Camino's Rate Schedule No. 1, filed October 20, 1966, should be accepted for filing, effective from the date of issuance of this order. The certificate issued to Camino Oil Corporation in Docket No. CI62-992 should be terminated, effective from the date of issuance of this order.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on April 27, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement thereto and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G-882 (8 FPC 250).

(2) Applicant, The Camino Corporation (formerly Camino Oil Corporation), is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission,

and is therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The sale of natural gas proposed to be abandoned by Trunkline Gas Company in Docket No. CP67-101, and by the Camino Corporation in Docket No. CI67-613, as hereinbefore described and as more fully described in the respective applications in these proceedings, are subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) The proposed abandonments of sale by Trunkline and Camino are permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificate of public convenience and necessity issued in Docket No. CI62-992, be terminated, Camino's Rate Schedule No. 1 be cancelled, and the Notice of Cancellation filed by Camino on October 20, 1966, be accepted for filing and designated as Supplement No. 1 thereto, to be effective from the date of issuance of this order.

*The Commission orders:*

(A) Permission for and approval of the abandonment of the sale and delivery of natural gas by Applicant to Transco, and by The Camino Corporation (formerly Camino Oil Corporation) to Transco, hereinbefore described, and as more fully described in the applications filed in these proceedings is granted.

(B) Trunkline shall advise the Commission of the date of abandonment of service as authorized in paragraph (A) above within 10 days of such abandonment.

(C) Camino's Rate Schedule No. 1 is cancelled and the Notice of Cancellation of Camino's Rate Schedule No. 1, designated Supplement No. 1 thereto is accepted for filing effective from the date of issuance of this order.

(D) The certificate of public convenience and necessity issued to Camino Oil Corporation in Docket No. CI62-992 is terminated.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP67-182

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 5, 1967)

On April 13, 1967, Florida Gas Transmission Company (Petitioner) filed in Docket No. CP67-182 a petition to amend the order issued in said docket on March 6, 1967, 37 FPC 499, so as to extend from April 1, 1967, to April 1, 1968, the time within which the proposed facilities are to be completed and ready for operation, all as more fully set forth in the petition to amend.

By order issued March 6, 1967, the Commission granted Petitioner a certificate of public convenience and necessity authorizing the construction and operation of certain delivery facilities with the requirement in paragraph (C) of said order that the facilities authorized by the certificate were to be constructed and in operation by April 1, 1967.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued March 6, 1967, in Docket No. CP67-182 be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued March 6, 1967, in Docket No. CP67-182 is amended so as to extend the time for completion and operation of the authorized facilities to April 1, 1968.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PHILADELPHIA ELECTRIC COMPANY, PROJECT NO. 2355

### ORDER APPROVING REVISED EXHIBIT K DRAWING FOR PROJECT

(Issued May 5, 1967)

On December 8, 1966, Philadelphia Electric Company, licensee for Muddy Run Pumped Storage Project No. 2355, filed for Commission approval a revised Exhibit K drawing showing project transmission lines crossing the Conowingo Reservoir and their minimum clearance above the reservoir. Project No. 2355 is located in the Conowingo Reservoir reach of the Susquehanna River and on its tributary Muddy Run, in Lancaster and York Counties, Pennsylvania.

The revised Exhibit K drawing was filed in compliance with Article 33 of the license which also provided that licensee shall not commence construction of the lines until Commission approval of the revised drawing.

The Chief of Engineers, Department of the Army, has reported that the plans of the transmission lines (220 kv) crossing the Conowingo Reservoir are satisfactory insofar as the interests of navigation are concerned.

Public notice of the filing of the revised Exhibit K drawing has been given. No protests or petitions to intervene have been received.

The vertical clearance and location of the transmission lines crossing over the Conowingo Reservoir are satisfactory insofar as the public interest is concerned.

*The Commission finds:*

(1) Revised Exhibit K: Sheet 5 of 5 (FPC No. 2355-35) entitled "Property Plan," conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) License Exhibit K: Sheet 5 of 5 (FPC No. 2355-19) entitled "Property Plan," which has been superseded, should be eliminated from the license for the project.

*The Commission orders:*

The revised Exhibit K drawing described in finding (1) above is hereby approved as part of the license for Project No. 2355, and the superseded license Exhibit K drawing described in finding (2) above is hereby eliminated from the license for the project.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-168

### ORDER FIXING DATE FOR PREHEARING CONFERENCE, PERMITTING INTERVENTION, AND EXTENDING TIME FOR FILING PETITIONS TO INTERVENE

(Issued May 5, 1967)

On April 20, 1967, the Commission issued an order in this proceeding, 37 FPC 780, granting the certificate of public convenience and necessity requested by Southern Natural Gas Company (Southern) in its application in Docket No. CP67-168, but reserving for formal hearing the question of whether certificates issued to Southern, including the one granted in this proceeding, should impose volumetric limitations upon the quantities of gas which Southern is authorized to sell to its customers.

On March 2, 1967, Southern filed a statement in Docket No. CP67-168, setting forth not only its views but those of some of its customers concerning volumetric certificate limitations. Southern's statement refers to Commission orders[1] which are cited in support of its belief that the Commission has specifically taken notice of the fact that it operates under "open-end" certificates. Southern indicates that it would not object to the imposition of limitations on the volumes of gas which it and other pipeline companies can sell to customers in market areas where Southern is competing for sales with other pipeline companies because such limitations would place Southern and the pipeline companies with which it is competing on equal footing. Southern's customers in the competitive category are Atlanta Gas Light Company (which is served by both Southern and Transcontinental Gas Pipe Line Corporation in the Atlanta, Georgia, area) and Chattanooga Gas Company (which is served by both Southern and East Tennessee Natural Gas Company in the Chattanooga, Tennessee, area). Southern also would not object to certificate limitations on the volumes of gas it can sell to Carolina Pipeline Company, Florida Gas Transmission Company, and Texas Eastern Transmission Corporation because these three companies also buy gas from other suppliers.

However, Southern does not believe it is in the public interest to impose certificate limitations on the volumes of gas which it can sell to customers in the market areas where it is the sole supplier. Southern supports this view by pointing out that it supplies natural gas to 103 municipal gas systems and gas districts in Alabama, Mississippi, and Georgia, and sells gas to four investor-owned distribution companies and one pipeline company which serve 325 additional Mississippi, Alabama, and Georgia communities. Southern claims that these customers have historically underestimated their requirements. For example, 54 of them so underestimated their requirements for the 1966-67 heating season that it was necessary for Southern to increase their contract demands and maximum delivery obligations by a total amount of 38,439 Mcf more per day than the volumes these customers had estimated their requirements to be when Southern filed its expansion application in Docket No. CP64-314.[2] Southern contends that if it had had to obtain an amendment to its certificate in Docket No. CP64-314 in order to serve these additional firm requirements, the substantial delay associated with obtaining the certificate amendment would have been a hardship on its customers and the consumers they serve.

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[1] *Southern Natural Gas Co.*, 12 FPC 516, 532; *South Georgia Natural Gas Co.*, 22 FPC 211, 215; City of Monticello, Georgia, 29 FPC 912; *Southern Natural Gas Co.*, 31 FPC 789, 802-03.

[2] Granted June 8, 1966, In *Transcontinental Gas Pipe Line Corp.*, Opinion No. 493 35 FPC 917.

Southern's present procedure for granting additional firm gas to a customer, when it has the capacity to deliver additional volumes, is to file a revised Exhibit A to its service agreement with the customer requesting the increase. Southern points out that this procedure enables the customer to receive promptly the increased service and it is unnecessary for the customer to submit detailed market data or for Southern to spend time and effort to prepare a petition, with exhibits, requesting modification of a certificate previously issued.

Southern's municipal customers support its position and argue that the present procedure utilized by Southern permits small distributors to act quickly in competing with large gas distributors who, because of their substantial contract quantities and number of customers, are able to rely on load diversification in supplying the requirements of new industrial customers. The municipal customers contend that certificate volumetric limitations would merely cause them to have to increase unduly their contract quantities or face the risk of incurring substantial unauthorized overrun penalties which would in turn add to their costs and probably compel them to raise their customers' rates.

On March 15, 1967, Chattanooga Gas Company (Chattanooga) filed an answer to Southern's statement of position, urging that Southern be allowed to continue operating under "open-end" certificates and requesting that no volumetric limitations be placed on Southern's certificates without there first being held a hearing "* * * to develop on the record the extent to which, if any, the public convenience and necessity require imposition of service limitations." Chattanooga especially objects to Southern's suggestion that volumetric limitations be imposed in areas where Southern competes for sales with other pipeline companies. Chattanooga claims it is not only faced with competition posed by attractive TVA electric rates, but must also vie with its neighboring communities for available industrial customers. It contends that it must therefore have every opportunity in the form of price and supply flexibility to meet this competitive challenge, and must not be faced with supply limitations that are not also imposed upon other customers of Southern.[3]

Petitions seeking leave to intervene in any formal hearing held in connection with Southern's application in Docket No. CP67-168 were timely filed by the following companies:

| Names of petitioners | Dates filed |
|---|---|
| Alabama Gas Corp. | Dec. 30, 1966 |
| Atlanta Gas Light Co. | Jan. 16, 1967 |
| Carolina Pipeline Co. | Jan. 13, 1967 |
| Mississippi Valley Gas Co. | Jan. 16, 1967 |
| South Carolina Natural Gas Co. | Do. |

The statements by Southern and Chattanooga hereinbefore discussed show that customers other than those listed above may wish to file petitions to intervene in the hearing to be held regarding the volumetric certificate limitation issue. Therefore, this order will extend the time for other interested persons to file petitions to intervene in this proceeding if they wish to do so.

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[3] On March 9, 1967, and March 23, 1967, Carolina Pipeline Company filed statements expressing similar views.

*The Commission finds:*

(1) It is appropriate for a hearing to be held in this proceeding in order that interested parties and the Commission's staff may develop a record from which it may be determined whether volumetric limitations should be imposed in certificates issued to Southern Natural Gas Company, beginning with the one issued April 20, 1967, in Docket No. CP67-168.

(2) It is desirable to allow the companies which have filed petitions to intervene to become interveners in this proceeding in order that they may establish the facts and law from which the nature and validity of their alleged rights and interests pertaining to the issue of volumetric certificate limitations may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

*The Commission orders:*

(A) Pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before a duly designated presiding examiner shall commence at 10:00 a.m. (EDST) on June 21, 1967, in a hearing room of the Federal Power Commission, Washington, D.C. 20426, for the purpose of considering all matters pertaining to the issue of certificate limitations, determining the manner in which evidence shall be presented, fixing the date on which the hearing shall commence, and entertaining adoption of suggestions which may expedite the proceeding.

(B) The above-named petitioners are hereby permitted to become interveners in this proceeding subject to the rules and regulations of the Commission: *Provided, however*, That the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(C) Additional petitions to intervene or protests may be filed with the Federal Power Commission, 441 G Street, NW., Washington, D.C. 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (157.10) on or before May 22, 1967.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## TOWN OF BELHAVEN, NORTH CAROLINA, ET AL. v. VIRGINIA ELECTRIC & POWER COMPANY, ET AL., DOCKET NO. E-7308

### ORDER DENYING MOTION TO DISMISS, ACCEPTING ANSWER FOR FILING, JOINING ADDITIONAL PERSONS AS RESPONDENT PARTIES, AND PROVIDING FOR HEARING

(Issued May 8, 1967)

This order directs a hearing on issues raised in a complaint filed August 30, 1966, by the Town of Belhaven, North Carolina, and ten other North Carolina municipalities,[1] as amended on February 20, 1967. The complaint, directed against Virginia Electric & Power Company (VEPCO) as the named respondent, alleges, *inter alia*, that VEPCO's present rates to complainants are unlawful within the meaning of Sections 205 and 206 of the Federal Power Act and seeks relief pursuant to Sections 201, 202, 205, 206, 207, 208 and 209 of the Act. On October 3, 1966, VEPCO filed an Answer and Motion to Dismiss. Complainants filed an Objection to the Motion to Dismiss on October 10, 1966. The Motion to Dismiss argues that there is no "reasonable ground for investigating such complaint." We do not agree. In order that we may make determination as to the merits of the complaint, we are ordering a hearing on the issues raised by Complainants as to the lawfulness of the rate schedules complained of.[2]

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[1] The Town of Edenton, N.C., and Board of Public Works, of Edenton; The City of Elizabeth City, N.C.; The Town of Enfield, N.C.; The City of Greenville, N.C., and Greenville Utilities Commission; The Town of Hertford, N.C.; The Town of Robersonville, N.C.; The Town of Scotland Neck, N.C.; The Town of Tarboro, N.C.; The City of Washington, N.C.; and, The Town of Windsor, N.C.

On February 20, 1967, the Complaint was amended by a Motion for Assignment to Trial Examiner for Early Hearing and an Order Directing Answers to Interrogatories (Amendment). Complainants specifically requested that this filing be treated as an amendment to the Complaint. The Complaint and the Amendment raise issues which appear to involve not only the named respondent but also the other members of the Carolina-Virginias Power Pool (CARVA Pool), Carolina Power & Light Company (Carolina), Duke Power Company (Duke), and South Carolina Electric & Gas Company (South Carolina),[3] each a public utility and licensee within the meaning of the Federal Power Act. Therefore, in order to assure that all persons who may be affected by an order on this matter have an opportunity to be heard, we are ordering that Carolina, Duke and South Carolina be joined as parties respondent in this proceeding, with opportunity for full participation in all hearings to be held in this case. To further facilitate the development of a complete record in this case, we are providing by this order that this investigation and hearing include the terms of the CARVA Pool Agreement[4] as they may pertain to the issues raised by the pleadings filed in this case.

The February 20, 1967 Amendment requests an order directing answers to interrogatories, which were appended to the Amendment. Complainants further request that if any of the interrogatories cannot be answered by VEPCO, that VEPCO be directed to notify other members of the CARVA Pool and that those other members be directed to answer within ten days following notification. On March 16, 1967, VEPCO filed objections to Complainant's motion for interrogatories; on March 24, 1967, VEPCO filed a motion for extension of time to answer complainants' motion, asking that its March 16, 1967 objections be accepted for filing; and on March 29, 1967, Complainants filed objections to the motion for extension of time. There is good cause to grant VEPCO's Motion for Extension of Time and accept its Objections for filing. VEPCO contends in its Objections that the totality of the demands made in the interrogatories are harrassing, oppressive and unjustified by the Complaint as to their relevance and materiality. VEPCO also points out that some of the information requested is available in the files of this Commission or of State Commissions.

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[2] VEPCO's Rate Schedule F.P.C. No. RS (Electric Tariff).

[3] Complainants February 20, 1967 Amendment states (pp. 1, 3): "* * * the relief requested herein may include the necessity of admission of complainants as members of said pool * * *;" and "Belhaven, et al., move that * * * copies of the complaint * * * be served upon * * * Carolina Power * * * Duke Power * * * South Carolina Electric & Gas * * *."

[4] Carolina Power & Light Company Rate Schedule F.P.C. No. 92, Duke Power Company Rate Schedule F.P.C. No. 148, South Carolina Electric & Gas Company Rate Schedule F.P.C. No. 26, and Virginia Electric & Power Company Rate Schedule F.P.C. No. 72.

We believe that requests for interrogatories can be dealt with most expeditiously in the context of a prehearing conference before a hearing examiner. Therefore, we are not here passing on the motion for interrogatories but directing the examiner to be appointed to hear the case to do so. We are ordering a prehearing conference for the purpose of narrowing the issues to be heard, hearing requests for discovery by all parties, setting dates for service of testimony and cross-examination and for such other matters as may be appropirate.

*The Commission further finds:*

(1) It is necessary and appropriate for the purposes of the Federal Power Act that VEPCO's motion to dismiss be denied.

(2) Good cause has been shown to grant VEPCO's motion for extension of time.

(3) It is necessary and appropriate for purposes of the Federal Power Act that a prehearing conference be held before a hearing examiner of this Commission for the purposes set forth in the recital above.

(4) It is appropriate for the purposes of the Federal Power Act that Carolina Power & Light Co., Duke Power Co., and South Carolina Electric & Gas Co., be joined as parties respondent to this proceeding, that they be served with copies of all pleadings filed in this docket and that they be afforded opportunity to answer the Complaint and Amendment and to participate in all hearings to be held on this matter.

*The Commission orders:*

(A) A hearing shall be held concerning the lawfulness of the rate schedules referred to in the recital above as they relate to issues raised in the pleadings heretofore filed in this case or as may be filed hereafter pursuant to Paragraph (G) below; said hearing to commence with a prehearing conference to be held before a hearing examiner of the Commission at 10:00 a.m. (EDT) June 8, 1967, in a hearing room of the Commission, 441 G Street, N.W., Washington, D.C.

(B) VEPCO's Motion To Dismiss is denied.

(C) VEPCO's Objections to Complainants' motion for an early hearing and for an order directing answers to interrogatories is accepted for filing.

(D) Complainants' motion for an order directing answers to interrogatories is forwarded to the hearing examiner for action by him at the prehearing conference ordered herein.

(E) Carolina Power & Light Co., Duke Power Co., and South Carolina Electric & Gas Co. are joined as parties respondent in this proceeding.

(F) The Secretary of the Commission is directed to serve copies of all pleadings heretofore filed in this case on Carolina, Duke and South Carolina.

(G) Answers to the Complaint, as amended, may be filed by parties to this proceeding on or before June 5, 1967.

(H) Notices of Intervention and Petitions to Intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before June 1, 1967.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## MISSISSIPPI POWER & LIGHT COMPANY, DOCKET NOS. E-7338, E-7339 AND E-7340

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued May 8, 1967)

Mississippi Power & Light Company (Applicant) filed three applications on February 13, 1967, for orders, pursuant to Section 203 of the Federal Power Act, authorizing the leases and purchases of certain electric transmission facilities from Delta Electric Power Association (Delta) (Docket Nos. E-7338 and E-7339) and Twin County Electric Power Association (Twin County) (Docket No. E-7340).

Applicant is incorporated under the laws of Mississippi with its principal business office at Jackson, Mississippi and is engaged in the electric utility business in parts of 45 of the 82 counties in Mississippi.

Delta owns and operates a cooperative distribution system serving rural areas in 13 counties of western Mississippi. Delta has no generating facilities and purchases most of its energy requirements from Applicant.

Twin County owns and operates a cooperative distribution system serving rural areas in six counties of western Mississippi. Twin County has no generating facilities and purchases its entire energy requirements from Applicant.

In its application filed in Docket No. E-7338, Applicant requests approval to perform its agreement of August 1, 1966, with Delta to construct for the account of Delta, to lease, operate, maintain and to purchase at the end of 10 years (or earlier) 3.5 miles of 115 kv transmission line to be located in Leflore County, Mississippi. The cost of the facilities to be leased and purchased is estimated to be $95,000. The Applicant will pay an annual lease rental equal to 2½% of the original cost of the line and will make 10 annual payments each equal to 7½% of said cost toward the purchase of the line. On the completion of these 10 payments the Association will convey title of the line to the Applicant.

In its application filed in Docket No. E-7339, Applicant requests approval to perform its agreement of January 25, 1967, with Delta to construct for the account of Delta to lease, operate, maintain and to purchase at the end of 10 years (or earlier) 6.5 miles of 115 kv transmission line located in Sunflower County, Mississippi. Applicant will pay an annual lease rental equal to 2½% of the original cost of said line and will make 10 annual payments equal to 7½% of said cost toward the purchase of the line. Upon the completion of said payments, Delta will convey title of said line to Applicant. The cost of the facilities to be leased and purchased is estimated at $205,000.

In its application filed in Docket No. E-7340, Applicant requests approval to perform its agreement of May 31, 1966, with Twin County to lease, operate, maintain and to purchase at the end of 10 years (or earlier) 0.94 miles of 115 kv transmission line located in Washington County, Mississippi. The Applicant will pay an annual lease rental of $1,350.95 and will make 10 annual payments of $4,052.86 toward the purchase of the line. Upon the completion of said payments Twin County will convey title of said line to Applicant.

The original cost of the facilities to be leased and purchased is $54,038.16.

On the Applicant's books, the annual rent payments of 2½%, will be debited to Operation Expense, Account 567, Transmission Rents; and the annual purchase payments of 7½% will be debited to Account 186, Miscellaneous Deferred Debits, and at the end of 10 years the acquisitions will be recorded on the Applicant's books by debits of original costs to Account 101, Electric Plant in Service, by credits to Account 186, Miscellaneous Deferred Debits, to close this account, and by credits to Account 108, Accumulated Provision for Depreciation of Electric Plant in Service, for the difference between the amounts debited to Account 101 and the amounts credited to Account 186.

From an operational viewpoint, Applicant's ownership of the three sections of line is preferable and in the public interest. The circuit breakers at Cleveland and Greenwood will operate to clear any fault on the Cleveland-Greenwood line and on the tap line to Delta's Minter City Substation (Docket No. E-7338). Similarly, the tap lines to Delta's Shaw Substation (Docket No. E-7339) and to Twin County's Greenville Substation (Docket No. E-7340) are protected by circuit breakers at the terminals of the main transmission lines to which they are connected. Applicant now has air patrol of its own transmission lines. Patrolling of the taps to the cooperatives' new substations can be done at a negligible increase in Applicant's cost of this service. Applicant also has greater resources in equipment and personnel for transmission line maintenance than Delta and Twin County.

Written notice of these applications has been given to the Governor of the State of Mississippi and to the Public Service Commission of that State. Notice was also published in the Federal Register on March 2, 1967 (32 F.R. 3480), stating that any person desiring to be heard or to make any protest with reference to the application should on or before March 13, 1967, file with the Federal Power Commission petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the States of Arkansas, Louisiana and Tennessee and consumed in the State of Mississippi, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or solely for the transmission of electric energy consumed wholly by the transmitter. Applicant, therefore, is a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) By the proposed transactions, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Delta and Twin County, other persons within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed leases and acquisitions by Applicant, as described above, upon the terms and conditions set forth in the applications in Docket Nos. E-7338, E-7339 and E-7340, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed leases and acquisitions by Applicant of the aforementioned electric facilities, all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the applications subject to the provisions of this order.

(B) Applicant shall record the proposed transactions herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and as set forth above in this order.

(C) This authorization shall expire for each of the transactions herein authorized and approved in Docket Nos. E-7338, E-7339 and E-7340 which is not consummated within 90 days from the date of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## CONSOLIDATED GAS SUPPLY CORPORATION, DOCKET NO. CP67-212

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 9, 1967)

On January 26, 1967, Consolidated Gas Supply Corporation (Applicant) filed in Docket No. CP67-212 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of three separate projects, comprising a total of 32.0 miles of 20 and 30-inch pipeline loops in Livingston, Madison, and Herkimer Counties, New York, all as more fully described in the application.

The proposed construction and operation consists of the following facilities:

(1) Approximately 10.7 miles of 20-inch pipeline No. 554, looping existing lines Nos. 14 and 24, extending in a northerly direction from Craigs Connection to the Caladonia Connection, all in Livingston County, New York.

(2) Approximately 10 miles of 30-inch pipeline No. 550, looping existing line No. 30, extending in a northeasterly direction from the DeRuyter Connection toward the Morrisville Connection, all in Madison County, New York.

(3) Approximately 11.3 miles of 20-inch pipeline No. 550 looping existing line No. 30, extending in an easterly direction from the Herkimer Connection to the Cramer Gate, all in Herkimer County, New York.

The proposed facilities are designed to enable Applicant to meet the requirements of its Northern Division during the 1967-1968 winter season.

The estimated cost of the proposed pipeline is $3,781,113, which will be financed through the use of funds on hand and funds to be obtained from Applicant's parent corporation, Consolidated Natural Gas Company.

Due notice of the filing was issued on February 1, 1967. No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 4, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Consolidated Gas Supply Corporation, a West Virginia corporation having its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of February 2, 1965, in Docket No. CP63-272 (33 FPC 150).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of said Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Consolidated Gas Supply Corporation authorizing the construction and operation of the facilities and the transportation of natural gas in interstate commerce as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by November 1, 1967.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## DUKE POWER COMPANY, PROJECT NO. 2465

### ORDER ISSUING LICENSE (MAJOR)

(Issued May 9, 1967)

Application was filed on April 21, 1964, and amended on July 21, 1965, by Duke Power Company (Applicant) of Charlotte, North Carolina, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2465, known as the Hollidays Bridge Project, on the Saluda River in Greenville and Anderson Counties, South Carolina, approximately four miles east of Belton, South Carolina. The project does not affect lands of the United States.

The Hollidays Bridge Project was constructed and placed in operation in 1906. There has been no project construction since the 1935 amendment to the Act.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to the provisions of Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project terms and conditions in the interests of fish and wildlife and recreation, as are set forth in attached Form L-10, and suggested that if a license is granted, the Commission assure that the license terms do not prevent redevelopment of the river at some later date, since, the Department states, there is a possibility for redevelopment of the stretch of the Saluda River herein involved. However, our investigation indicates there are no present or future plans for Federal development of the Saluda River either below, at, or above the site of the Hollidays Bridge Project that would affect this project. Article 10 of attached Form L-10 provides for such additional capacity and other changes in the project as may be directed by the Commission upon a showing of economic feasibility and consistency with the public interest.

The Department of Health, Education, and Welfare has advised that there are no known adverse effects on water supply, water pollution control, or vector control attributable to the project, and none is anticipated.

Applicant filed an Exhibit R statement reciting the lack of recreational potential at the project. The exhibit does not conform to Commission requirements and we are therefore not approving it. The South Carolina Wildlife Resources Department has advised that there is no need for public recreation facilities on the Hollidays Bridge Project pond; that any increase in public recreation facilities could be made on nearby Greenwood County's Lake Greenwood, South Carolina Electric & Gas Company's Lake Murray and on the U.S. Corps of Engineers' Hartwell Lake; and that should the need arise in the future for a public access area on the Hollidays Bridge pond, the present cooperative agreement between Applicant and the Department is adequate to provide for such an area. Nevertheless we are providing in Articles 18, 19 and 28 herein requirements to meet any future needs for recreation which may arise.

Power produced by the Hollidays Bridge Project will be marketed to customers of Applicant in North and South Carolina and will be marketed by other members of the CARVA Pool[1] serving in the two Carolinas and Virginia.

The license herein granted shall have an effective date of May 1, 1965, the first day of the month in which the Supreme Court of the United States affirmed the Commission's findings and order asserting licensing authority over Taum Sauk Project No. 2277 by virtue of the effect of the hydroelectric project on the interests of interstate commerce by its utilization of headwaters of a navigable stream to generate electric energy for an interstate power system (381 U.S. 90), and a termination date of December 31, 1993.

*The Commission finds:*

(1) Hollidays Bridge Project affects the interests of interstate commerce.

(2) Applicant is a corporation organized under the laws of the State of North Carolina, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 4,700 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

*The Commission orders:*

(A) This license is hereby issued to Duke Power Company (Licensee) of Charlotte, North Carolina, under Section 4(e) of the Federal Power Act (Act) for a period effective as of May 1, 1965 and terminating December 31, 1993, for the continued operation and maintenance of the Hollidays Bridge Project No. 2465, located on the Saluda River in Greenville and Anderson Counties, South Carolina, and affecting the interests of interstate commerce, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Hollidays Bridge Project consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

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[1] The members of the CARVA Pool are: Duke Power Company, Carolina Power & Light Company, South Carolina Electric & Gas Company and Virginia Electric & Power Company.

Exhibit J: (FPC No. 2465-2) entitled "General Map and Profile"

Exhibit K: (FPC No. 2465-5) entitled "Project Area"

(ii) project works consisting of:

*Hollidays Bridge Project*—The project consists of: (1) a 644-foot long concrete gravity dam with a maximum height of about 50 feet made up of: a 386-foot long ogee spillway section with flashboards at elevation 634.0 feet; a 77-foot long non-overflow section between the canal and spillway; a 51-foot long intake section with four slide gates; and non-overflow abutment sections 47 and 73 feet long tying into the banks; (2) a 466 acre reservoir at elevation 634.0 feet; (3) a 950-foot long power canal with an overflow; (4) a powerhouse containing four operating generators, one of 500 kw capacity and three of 1000 kw capacity; the turbine of a fifth 100 kw unit is inoperable and the generator is used as a motor; (5) six 2.3–22.5 kw, 500 kva transformers; and (6) 3.5 miles of 22 kv transmission line to Belton-Williamston line; and (7) appurtenant electrical and mechanical facilities: the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

| Exhibit L | FPC No. | Showing |
|---|---|---|
| Sheet 1 | 2465–6 | Plan of dam, canal and powerhouse. |
| Sheet 2 | 2465–7 | Elevation of dam, intake and powerhouse. |
| Sheet 3 | 2465–8 | Sections of dam and powerhouse. |

*Exhibit M:* Consisting of three typewritten pages entitled, "General Descriptions of Mechanical, Electrical and Transmission Equipment," filed April 21, 1964, and amended July 21, 1965.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–10, entitled "Terms and Conditions of License for Constructed Major Project Affecting the Interests of Interstate or Foreign Commerce," *infra*, p. 860, which terms and conditions, designated as Articles 1 through 26, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

*Article 27.* The Licensee shall pay to the United States the following annual charge, effective as of May 1, 1965:

> For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 4,700 horsepower.

*Article 28.* Licensee shall cooperate with State and local agencies in the development and maintenance of public access areas and such other additional facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and operation of the project.

*Article 29.* The Commission reserves the right to determine at a later date what additional transmission facilities, if any, should be included in this license as a part of the project.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

### FORM L-10

### (SEPTEMBER 1, 1966)

## TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MAJOR PROJECT AFFECTING THE INTERESTS OF INTERSTATE OR FOREIGN COMMERCE

*Article 1.* The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

*Article 2.* No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as part of the license, until such change shall have been approved by the Commission: *Provided*, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed change which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

*Article 3.* The project area and project works shall be in conformity with the approved exhibits referred to in Article 2 hereof. If the Licensee shall contemplate any substantial alteration in or addition to the project area or project works shown and described by the approved exhibits referred to in Article 2 herein, the Licensee shall submit to the Commission for approval amended, supplemental, or additional exhibits under the provisions of said article covering such alteration or addition, together with a statement in writing setting forth the reasons which necessitate or justify such alteration or addition. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

*Article 4.* The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health or property.

*Article 5.* In the absence of specific Commission exemption, the Licensee within five years from date of issuance of the license shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the maintenance and operation of the project. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

*Article 6.* In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of occupancy and use in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: *Provided,* That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of occupancy and use in any of such project property than was necessary to acquire for its own purposes as Licensee.

*Article 7.* The actual legitimate original cost, estimated where not known and the accrued depreciation of the project as of the effective date of the license shall be determined by the Commission in accordance with the Act and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date.

*Article 8.* After the first 20 years of operation of the project under the license, six percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of six percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year: *Provided*, that, if and to the extent that there is a deficiency of project earnings below six percent per annum for any fiscal year or years after the first 20 years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

*Article 9.* For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

*Article 10.* The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

*Article 11.* The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

*Article 12.* Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefore and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the determination of the amounts billed or a hearing as provided by the then current Regulations under the Act.

*Article 13.* The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

*Article 14.* On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region, for water supply for the purpose of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation, at least full reimbursement for any damages or expenses which the joint use causes him to incur, for use of its reservoirs or other project properties or parts thereof for such purposes, any such compensation to be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be concurrently submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

*Article 15.* In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

*Article 16.* The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

*Article 17.* Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

*Article 18.* The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, and shall comply with such reasonable modifications of the project structures and operations as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities and modifications are necessary and desirable, and reasonably consistent with the primary purpose of the project.

*Article 19.* So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided, that* the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and *Provided, further*, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

*Article 20.* The Licensee shall be responsible for and shall take reasonable measures to prevent soil erosion on lands adjacent to the stream and to prevent stream siltation or pollution resulting from construction, operation or maintenance of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish these purposes and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

*Article 21.* There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road as a public road.

*Article 22.* The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the margins of reservoirs which may die during operations of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

*Article 23.* If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

*Article 24.* Upon abandonment of the project the Licensee shall remove all structures, equipment and power lines from the stream and restore said stream to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

*Article 25.* The right of the Licensee and of its transferees and successors to use or occupy waters, over which the United States has jurisdiction under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless Licensee has obtained a new license pursuant to the then existing laws and regulations or an annual license under the terms and conditions of this license.

*Article 26.* The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## MYSTIC VALLEY GAS COMPANY, DOCKET NO. CP67-267

### DECLARATION OF EXEMPTION

(Issued May 9, 1967)

Mystic Valley Gas Company (Applicant) filed an application on March 17, 1967, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Applicant, a Massachusetts corporation with its principal place of business in Malden, Middlesex County, Massachusetts, is engaged in the transportation and sale of natural gas in the State of Massachusetts. Pursuant to certificate authorization Tennessee Gas Pipeline Company (Tennessee), a division of Tenneco Inc., sells and delivers natural gas to Applicant for transportation and sale for resale in the State of Massachusetts. Applicant also has an agreement for emergency service with Algonquin Gas Transmission Company which was approved by the Commission's order dated November 15, 1957, in Docket No. G-13081. (18 FPC 639)

Applicant is engaged in the retail distribution of natural gas within its service area in Massachusetts which includes all or part of the Cities of Everett, Malden, Medford, Melrose, Revere and Woburn and the Towns of Arlington, Belmont, Burlington, Lexington, Reading, Stoneham, Winchester and Winthrop. Applicant sells natural gas to the Town of Wakefield for resale by the municipal gas department of the Town. The gas is delivered to the Town of Wakefield at two main delivery points located within the limits of the Town. Applicant also delivers gas, for which it bills the Town, to the meters of eight residential customers isolated from the Town's distribution system but adjacent to Applicant's system. Applicant makes no other sales for resale.

All gas transported, sold and delivered is received and consumed within The Commonwealth of Massachusetts.

The Massachusetts Department of Public Utilities of the State of Massachusetts has certified to the Federal Power Commission that it has regulatory jurisdiction over the rates and services and facilities of the Applicant and is exercising such jurisdiction.

Wherefore, the Commission declares, by reason of the foregoing:

> Mystic Valley Gas Company is exempt from the provisions of the natural Gas Act, and the orders, rules and regulations of the Commission issued thereunder.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## NATURAL GAS COMPANIES—ANNUAL REPORTS OF SYSTEM FLOW DIAGRAMS, DOCKET NO. R-322

## ORDER NO. 345

### DISCONTINUING THE REPORTING OF CERTAIN INFORMATION

(Issued May 9, 1967)*

Section 260.8 of the Commission's regulations** requires certain Class A natural gas pipeline companies to file annually a flow diagram reflecting the operating conditions on their main transmission systems during the previous year. One of the items of information now required to be submitted by paragraph (b) of the section is—

> (12) The average and maximum (co-incidental and noncoincidental) daily volumes delivered at each takeoff point during the reporting year. * * *

A part of Item (12), the maximum non-coincidental daily volume delivered at each takeoff point, was required originally to enable the Commission to study the feasibility of a proposed method of allocation of pipeline company costs. That particular study is now completed and since we recognize that to obtain data on the maximum noncoincidental daily deliveries imposes a substantial burden on the reporting companies, we are deleting that requirement from the regulations.

The subparagraph also provides that small deliveries, *i.e.*, those less than 100 Mcf per day, may be grouped for reporting purposes in an appropriate manner. Since this applies in any event to deliveries which have little or no effect on the operation of the pipeline, we have determined that our purposes will be adequately served if the breaking point for grouping deliveries be raised to 200 Mcf.

*The Commission finds:*

(1) Since the amendment relieves the affected parties of an existing reporting requirement and we now have no indication that any person or agency has any use for the information, it is unnecessary to comply with the notice and effective date provisions of section 4 of the Administrative Procedure Act.

(2) The amendment herein adopted is necessary and appropriate in the administration of the Natural Gas Act.

*The Commission*, acting pursuant to the authority of the Natural Gas Act, as amended, particularly sections 4, 5, 7 and 16 thereof (52 Stat. 822, 823, 825; 56 Stat. 83; 15 U.S.C. 717c, 717d, 717f, 717o), *orders:*

(A) Part 260, Subchapter G, Chapter I of Title 18 of the Code of Federal Regulations is amended by revising subparagraph (12) of § 260.8(b). As revised, the subparagraph reads as follows:

> § 260.8 System flow diagrams.
>
> * * * * * * *
>
> (b) * * *
>
> (12) Volumes delivered: (a) the average daily volumes delivered at each take-off point, (b) the volumes delivered at each take-off point on

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* Published in the Federal Register on May 17, 1967 (32 F.R. 7331).

** Promulgated by Order No. 303-A issued May 10, 1966 in Docket No. R-257, 35 FPC 712, 31 F.R. 7226.

the day of maximum coincidental delivery, and (c) the maximum daily volumes (non-coincidental) delivered to each customer under rates subject to FPC jurisdiction. Where deliveries to a single customer are made at two or more points and conjunctive billing is used to determine charges, the volumes delivered shall be reported on the conjunctive basis. Small deliveries (less than 200 Mcf per day) which have little or no effect upon the operation of the pipeline may be grouped in an appropriate manner, i.e., between compressor stations or the last mainline compressor station and the end of the pipeline. If an estimate is used for a delivery, so indicate.

[Secs. 4, 5, 16, 52 Stat. 823, 824, 825, 830: 15 U.S.C. 717c, 717d, 717f, 717o.]

(B) This amendment shall be effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP67-266

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 9, 1967)

On March 16, 1967, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP67-266 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the twelve month period following the issuance of the Commission's order herein, and the operation of gas purchase facilities to enable Applicant to attach to its certificated main pipeline system natural gas which will be purchased from authorized independent producers in the general area of its system, all as more fully set forth in the application.

Applicant proposes to construct and operate routine gas supply facilities, including pipeline, metering and compression facilities.

The total estimated cost of Applicant's proposed facilities will not exceed $2,000,000, with no single project exceeding a cost of $500,000. Applicant proposes to finance said costs from funds on hand.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on May 4, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a

"natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the twelve month period following the issuance of this certificate and the total expenditures for facilities to be constructed thereunder should be limited to $2,000,000, with no single project to exceed a cost of $500,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct during the twelve month period following the issuance of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the twelve month period following the issuance of this order, and the total expenditures for facilities to be constructed thereunder are limited to $2,000,000 with no single project to exceed a cost of $500,000.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SHENANDOAH GAS COMPANY, DOCKET NO. CP65-287

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 9, 1967)

On April 14, 1967, Shenandoah Gas Company (Petitioner) filed in Docket No. CP65-287 a petition to amend the order issued in said docket on June 29, 1965, 33 FPC 1300, as amended May 12, 1966, 35 FPC 732, by extending the time from May 12, 1967, to May 12, 1968, for completion of certain facilities authorized in the aforesaid amending order, authorizing the delivery of natural gas on an interruptible basis to a new industrial customer, Bauhan-Davis Lime Co. Inc. (Bauhan-Davis), located in the environs of Strasburg, Virginia. Petitioner has not commenced construction of the facilities to serve Bauhan-Davis because Bauhan-Davis has delayed beginning construction of its plant due to financial conditions. Bauhan-Davis is now re-examining the financing possibilities and is hopeful of proceeding with the construction of its plant so that it will be completed within the next twelve months.

*The Commission orders:*

The time within which the facilities authorized by the order of May 12, 1966, in Docket No. CP65-287 shall be completed and delivery of natural gas shall commence is extended to May 12, 1968, and in all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-314

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 9, 1967)

On April 13, 1967, Southern Natural Gas Company (Petitioner) filed in Docket No. CP64-314 a petition to amend the order of the Commission issued in said docket on June 8, 1966, 35 FPC 917, and amended on March 6, 1967, 37 FPC 506, authorizing the Petitioner, among other things, to construct facilities to deliver firm third year peak day volumes of 2,613 Mcf to Intercoastal Gas Corporation for distribution in the Towns of Chatsworth, Ranger, Fairmont, Ellijay and East Ellijay, Georgia, all as more fully set forth in the said petition to amend.

Petitioner now requests the Commission to further modify the certificate order issued to it in Docket No. CP64-314 (Opinion No. 493, issued June 8, 1966) and extend the time to and including November 1, 1969 within which to construct and place in operation (1) the additional 350 horsepower of compressing facilities to be installed at Tarrant compressor station and (2) facilities to serve Atlanta Gas Light Company (Atlanta), as successor in interest to Intercoastal Gas Corporation (Intercoastal), as authorized by the Commission in its Opinion No. 493, issued June 8, 1966, in *Transcontinental Gas Pipe Line Corporation, et al.*, Docket No. CP64–270, *et al.*, as amended by order issued March 6, 1967.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued June 8, 1966, in Docket No. CP64–314 be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued June 8, 1966, in Docket No. CP64–314 is amended so as to modify Ordering Paragraph (B)(7) of Opinion No. 493 and extend the time for constructing and placing in operation (1) the additional 350 horsepower of compressing facilities to be installed at Tarrant compressor station and (2) facilities to serve Atlanta, as successor in interest to Intercoastal, be extended to and including November 1, 1969.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SUSQUEHANNA POWER COMPANY AND PHILADELPHIA ELECTRIC POWER COMPANY, PROJECT NO. 405

### ORDER AMENDING LICENSE

(Issued May 9, 1967)

On June 8, 1965, Susquehanna Power Company and Philadelphia Electric Power Company, joint licensees for Project No. 405 on the Susquehanna River in Maryland and Pennsylvania filed for Commission approval a proposal to provide recreation facilities at their Conowingo project. The application was modified by letters dated March 30, 1966, and August 2, 1966, with respect to the proposed fisherman's warning system, and was supplemented with a drawing (FPC 405–73) filed on September 8, 1966.

The proposal consists of improvements and additions to existing facilities for use by fishermen and visitors to the tailrace area, the development of a public access and boat launching area at the mouth of Conowingo Creek on Conowingo Reservoir, and the installation of a fishermen's warning system below Conowingo dam.

The facilities proposed for the tailwater include new paved roadways and parking spaces for 246 cars, paved walks and promenades, a two-story picnic shelter with public restrooms in the lower story, a fish-cleaning shed, and such other facilities, grading and landscaping needed to make the tailwater area functional and attractive for public use. The estimated cost of these facilities and development of the tailwater area is $330,000.

The proposal for boating access at Conowingo Creek includes a boat launching ramp, parking for 14 cars and 14 cars with trailers, together with landscaping, lighting and benches, at an estimated cost of $70,000.

The proposal for the fishermen's warning system, as revised, includes five large, elevated, red warning lights on Rowlands Island; warning signs at the powerhouse and each bank for a distance of 100 yards below the dam and powerhouse, denoting an area in which boating is prohibited; explanatory signs located at all access roads and parking areas on both sides of the river below the dam downstream to McCausland Island; printed folders setting forth basic safety rules and regulations for fishing and boating below the dam, to be made available to the public from boxes on the explanatory signs described above; and five new large red warning lights on the downstream face of the powerhouse. The estimated cost of the revised fishermen's warning system is $120,000.

The Department of the Interior in commenting on the proposed plan recommended approval of the application and indicated that the proposed plan would supplement existing recreation facilities considerably and should be implemented at an early date. The Federal Water Pollution Control Administration of the Department recomended approval of the application provided a secondary treatment system is constructed at Conowingo dam to handle waste discharges. Licensees have retained an engineering firm for consultation on waste treatment and propose, as a result thereof, to replace the present sewage treatment system with an extended aeration type plant acceptable to the Maryland State Health Department which we believe should meet the Department's objectives.

The United States Coast Guard in reporting on the application commented favorably on the prohibited area signs (and their flood lighting at night) as conforming in size, shape and symbol to the Uniform State Waterway Marker System but recommended inclusion of the words, "DAM TAILRACE" on the signs. The Licensees in commenting on the Coast Guard's recommendations agreed to change the prohibited area signs by adding the words "DAM TAILRACE".

The Department of the Army in commenting on the application advised that the amendment of the license as proposed will not require insertion of additional terms and conditions in the interest of navigation.

The State of Maryland Planning Department supported the proposed expansion of recreational facilities and requested consideration by the Licensees of (1) improved access to the Susquehanna River below Shures Landing for fishing use, (2) additional parking needs in the tailrace area, (3) coordination of recreational planning at the dam with that for the Susquehanna State Park, and (4) protection of the scenic values at the Conowingo Creek Development. Licensees have agreed to consult with the State on the first three points above and have given assurance that the development at Conowingo Creek would be done so as to improve the present appearance of the area. The Maryland Department of Game and Inland Fisheries has concurred in Licensees' revised plan for the fishermen's warning system.

The Commonwealth of Pennsylvania, Department of Forests and Waters in commenting on the application stated that the proposed improvements will provide much needed facilities for the public on Conowingo Reservoir but that sanitary facilities should be provided at the time the Conowingo Creek access area is developed, that the location of the picnic shelter and fish-cleaning shed might interfere with the fish passage facilities proposed for construction at Conowingo Dam, and recommended coordination by Licensees with the U.S. Coast Guard and other agencies on the needs of the fishermen's warning system. Licensees have stated that the location of the proposed fish ladder at Conowingo was considered in locating the picnic shelter and fish-cleaning shed and our review of the location of these facilities has revealed no conflict.

Licensees have also stated that the need for sanitary facilities at Conowingo Creek will be reviewed from time to time in light of public use of the area. The licensees will coordinate the needs of the fishermen's warning system with the appropriate State and Federal agencies.

While we are approving the proposal to provide recreation facilities as submitted by the Licensees as part of the license for the project, we are herein modifying the license for Project No. 405 to include two additional Articles to provide sanitary facilities at the Conowingo Creek development at the time of completion of these facilities and requiring the licensees to continue to cooperate with Federal and State agencies in the installation of any needed improvements to the proposed fishermen's warning system for the tailrace area at the Conowingo dam. We believe these articles will meet the suggestions made on those two subjects by the Commonwealth of Pennsylvania, Department of Forests and Waters and the United States Coast Guard respectively and will be consistent with the public interest.

*The Commission finds:*

The plan to provide recreation facilities for Project No. 405 as described in the following designated filings conforms to the Commission's Regulations and should be approved as part of the license:

(a) Application to Amend License To Provide Recreational Facilities (Filed June 8, 1965).

(b) Letter from Licensees dated March 30, 1966.

(c) Letter from Licensees dated August 2, 1966.

(d) Drawing (FPC 405-73) filed on September 8, 1966.

*The Commission orders:*

(A) The plan to provide recreation facilities as described in the filings designated in the above finding is hereby approved as part of the license for Project No. 405.

(B) The License for Project No. 405 is hereby modified to include therein the following additional articles:

> *Article 46.* The Licensees shall provide adequate sanitary facilities at the Conowingo Creek public recreation area of a design approved by the appropriate state department of health.
>
> *Article 47.* The Licensees shall, in the interest of public safety, continue to cooperate with Federal and State agencies in the installation of any needed improvement to the proposed fishermen's warning system for the tailrace area at the Conowingo dam and the Licensees shall make such reasonable modifications of the system and operation as may be ordered by the Commission upon its own motion after notice and opportunity for hearing and upon findings based on substantial evidence that such modifications are necessary, desirable, and reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. G-15123

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 9, 1967)

On May 19, 1958, United Gas Pipe Line Company (Applicant) filed in Docket No. G-15123 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a purchase meter station, a separator installation and approximately 9.35 miles of 16-inch pipeline and appurtenant facilities in St. Mary Parish, Louisiana, all as more fully set forth in the application.

Applicant seeks permanent authorization for the above-mentioned facilities being used in connecting the gas supply of the Belle Isle Area into its existing transmission system. The natural gas is being supplied by Sun Oil Company (Sun); the original recoverable reserves available to Applicant were estimated to be 301,346 MMcf in the original application.

The total actual cost of Applicant's facilities was $841,311, said cost being financed from funds on hand.

On August 10, 1959, Applicant was granted the certificate requested in the above-mentioned application authorizing the facilities above-described. United Gas Improvement Company (UGI) and the New York Public Service Commission, interveners in the instant proceeding, appealed the Commission's decision and the Court held that the Commission decision be set aside and the proceeding be remanded for further appropriate action by the Commission. Applicant then sought, and on October 26, 1962 was granted, temporary authorization to construct and operate the subject facilities. On November 14, 1962, 28 FPC 809, the Commission, in Docket No. G-15122, issued an order approving the offer of settlement by Sun of the rate to Applicant. The application is no longer contested and Applicant now seeks permanent authorization for said facilities.

At a hearing held May 4, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the original application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (e) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, United Gas Pipe Line Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e) and (g) of Section 157.20 of such Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. G-16556

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 9, 1967)

On October 14, 1958, United Gas Pipe Line Company (Applicant) filed in G-16556 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a purchase meter station, approximately 10.0 miles of 16-inch pipeline, and appurtenant facilities in Terrebonne Parish, Louisiana, all as more fully set forth in the application.

Applicant seeks permanent authorization for the above-mentioned facilities being used in the connection of the gas supply of the Four Isle Dome Area into its existing transmission system. The natural gas is being supplied by The California Company (California) and Superior Oil Company (Superior).

The total cost of Applicant's facilities was $762,723.

On August 10, 1959, Applicant was granted the certificate requested in the above-mentioned application authorizing the facilities above-described. United Gas Improvement Company (UGI), intervener in the instant proceeding, appealed the Commission's decision and the Court held that the Commission's order be set aside and the proceeding be remanded for further appropriate action by the Commission. Applicant then sought, and on October 26, 1962, was granted, temporary authorization to construct and operate the subject facilities. On July 30, 1962, 28 FPC 247, and July 17, 1963, 30 FPC 283, the Commission issued orders granting permanent certificates to California in Docket No. G-16108 and Superior in Docket No. G-16388, respectively. The application is no longer contested and Applicant now seeks permanent authorization for said facilities.

At a hearing held May 4, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the original application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware Corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (e) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, United Gas Pipe Line Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e) and (g) of Section 157.20 of such Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MCCARRICK, GOUGER & MITCHELL, ET AL., DOCKET NO. RI60-426

### ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, REQUIRING REFUNDS, SEVERING, AND TERMINATING PROCEEDING

(Issued May 10, 1967)

On March 20, 1967, McCarrick, Gouger & Mitchell, *et al.* (McCarrick) filed an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving an increased rate for sales of natural gas to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (TGP) from the Seeligson Field, Jim Wells County, Texas (Texas Railroad Commission District No. 4, under its FPC Gas Rate Schedule No. 2. McCarrick filed a rate increase from 12.12268¢ to 17.24347¢ per Mcf of natural gas at 14.65 psia, inclusive of tax reimbursement, on May 23, 1960, which was suspended by order of the Commission on June 22, 1960, for the statutory period, and thereafter made effective, subject to refund, by McCarrick on November 23, 1960.

Under the terms of the offer, McCarrick proposes to eliminate the periodic price escalation, price redetermination and favored-nation clauses from the subject contract, to substitute new periodic escalation provisions, and to reduce the rate to 14.6¢ per Mcf of natural gas at 14.65 psia, inclusive of tax reimbursement (three-fourths of taxes levied after January 1, 1967).

Approval of the proposal will decrease McCarrick's annual revenues approximately $8,200, based on the currently effective rate, and it will refund to TGP approximately $27,300, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1 (18 CFR 2.56) and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of McCarrick's offer of settlement shall not be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule resulting from the new periodic escalation provisions or from any possible future tax increase, and is without prejudice to any findings or orders of the Commission in any proceeding, including area rate or other similar proceeding, involving McCarrick's rate and rate schedule.

*The Commission finds:*

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by McCarrick on March 20, 1967, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

*The Commission orders:*

(A) The offer of settlement filed with the Commission by McCarrick on March 20, 1967, is approved in accordance with the provisions of this order.

(B) McCarrick shall file within 30 days from the date of issuance of this order a notice of change in rate providing for the 14.6¢ per Mcf rate specified in its settlement proposal and an executed contract amendment to its FPC Gas Rate Schedule No. 2 eliminating the present periodic, price redetermination, and favored-nation clauses therefrom and submitting in lieu thereof new periodic escalations consistent with the settlement proposal. The contractual amendment and notice of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) McCarrick shall compute the difference between the rate collected subject to refund and the settlement rate of 14.6¢ per Mcf of natural gas at 14.65 psia for the period from November 23, 1960 to the date of this order, together with applicable interest, and shall within thirty days from the date of this order submit a report to the Commission, and serve a copy on TGP, setting out the amount of refunds (showing separately the principal and interest) and the bases used for such determination. Ten days thereafter it shall refund such monies to TGP, and within ten days of making the refund shall file a letter of agreement and receipt of the refund monies from TGP.

(D) Upon compliance by McCarrick, with the provisions of this order, the proceeding in Docket No. RI60–426 shall be severed from the Texas Gulf Coast Area Rate Proceeding, Docket No. AR64–2, and terminated.

(E) The acceptance of the Commission of McCarrick's offer of settlement is without prejudice to any findings now pending, or hereafter instituted by or against McCarrick including area rate or other similar proceedings.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-244

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 10, 1967)

On March 15, 1967, Panhandle Eastern Pipe Line Company (Petitioner) filed in Docket No. CP66-244 a petition to amend the order of the Commission issued in said docket on June 6, 1966, 35 FPC 896, and amended on August 26, 1966, 36 FPC 538, which order, as amended, authorized the construction and operation of certain natural gas facilities together with the sale and delivery of increased volumes of natural gas to certain of its general service customers. By the instant filing Petitioner requests authority to increase the summer contract demands for four of its general service customers in order to enable them to meet their present contract firm requirements during the months of April through October, all as more fully set forth in the petition to amend.

Petitioner states that the following volumes of natural gas (in Mcf) are required by the aforementioned customers in view of their revised estimates of requirements for the summer season:

| Company | Total of present monthly demand Apr.-Oct. | Total of proposed monthly demand Apr.-Oct. | Total of proposed monthly increase |
|---|---|---|---|
| Associated Natural Gas Co. | 14,500 | 16,300 | 1,800 |
| Missouri Power and Light Co. | 138,000 | 145,000 | 7,000 |
| Missouri Utilities Co. | 66,400 | 82,000 | 15,600 |
| Central Illinois Electric and Gas Co. | 88,000 | 91,400 | 3,400 |

On March 31, 1967, the Commission issued to Petitioner a temporary certificate authorizing the additional service proposed during the period April 1, 1967, through October 31, 1967.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued on June 6, 1966, as amended, be amended further as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on June 6, 1966, in Docket No. CP66-244, as amended, is amended further so as to authorize the increased sale and delivery of natural gas by Petitioner to the general service customers listed above in order to enable them to meet their present firm requirements during the period April 1, 1967, through October 31, 1967, as hereinbefore set forth and as more fully set forth in the petition to amend filed in this proceeding.

(B) Petitioner shall make appropriate rate filings reflecting the increased service authorized herein and shall notify the Commission of the dates of commencement of such service within ten days thereof.

(C) In all other respects the subject order shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## CITIES OF PRINCETON AND MERCER, MISSOURI, AND LINEVILLE, IOWA, AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-240

### ORDER AMENDING ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 10, 1967)

On April 19, 1967, the Cities of Princeton and Mercer, Missouri, and Lineville, Iowa (Petitioners) filed in Docket No. CP66-240 a petition to amend the order issued in said docket on May 24, 1966, 35 FPC 782, requesting that paragraph (B) of said order be amended so as to extend the time until May 24, 1968, for Petitioners to be prepared to receive natural gas from Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), all as more fully set forth in the petition to amend.

The order of the Commission issued May 24, 1966, directs Michigan Wisconsin to make physical connection with and deliver natural gas to Princeton and Mercer, Missouri, and Lineville, Iowa, for local distribution. Paragraph (B) of said order requires Petitioners to be prepared to receive natural gas from Michigan Wisconsin by May 23, 1967.

Petitioners state that construction and final testing of the transmission lateral line and distribution systems cannot be completed in time to meet the required May 23, 1967 deadline.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity requires that the Commission's order issued May 24, 1966, in Docket No. CP66-240, as amended, be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued May 24, 1966, in Docket No. CP66-240, is further amended so as to modify the provisions of Ordering Paragraph (B) and extend the time in which the Cities of Princeton and Mercer, Missouri, and Lineville, Iowa, shall be prepared to receive natural gas from Michigan Wisconsin from May 23, 1967, to May 24, 1968.

(B) In all other respects said order, as amended shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SALTILLO-GUNTOWN NATURAL GAS DISTRICT, MISSISSIPPI AND TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., DOCKET NO. CP67-165

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 10, 1967)

On December 13, 1966, Saltillo-Guntown Natural Gas District, Mississippi (Applicant), filed in Docket No. CP67-165 an application, as supplemented on March 13, 1967, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Pipeline Company (Respondent) to establish physical connection of its facilities with the facilities to be constructed by Applicant and to sell and deliver volumes of natural gas to Applicant, all as more fully set forth in the application and supplement thereto.

Specifically, Applicant requests that the Commission order Respondent to make physical connection of its transmission facilities with the facilities to be constructed by Applicant and to sell and deliver volumes of natural gas to Applicant for resale and distribution in the Towns of Guntown and Saltillo, in Lee County and adjacent parts of Lee, Tippah and Union Counties and along Applicant's proposed transmission line, all in Mississippi.

The estimated third year annual and peak day requirements of Applicant's proposed system in Mcf at 14.73 psia are 137,808 and 1,615 respectively.

The total cost of Applicant's proposed construction is estimated at $995,000 and will be financed through the sale of 30-year revenue bonds.

On January 16, 1967, Respondent filed an answer to the application in this proceeding stating it does not oppose the granting of the application for an order directing it to render the service requested.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on December 28, 1966 (31 F.R. 16590). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding, other than a petition to intervene filed by Mississippi Valley Gas Company on January 16, 1967, and withdrawn on April 11, 1967.

*The Commission finds:*

(1) Tennessee Gas Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretobefore found by the Commission in its order issued July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 1,615 Mcf per day of natural gas for distribution and resale, as hereinbefore

described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in the towns of Saltillo and Guntown in Lee County and the adjacent parts of Lee, Tippah and Union Counties and along Applicant's proposed transmission line, all in Mississippi, within one year from the date of the issuance of this order.

(5) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Tennessee Gas Pipeline Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver up to 1,615 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent and filed in accordance with the Commission's Regulations, for distribution and resale, as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP67-198

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued May 10, 1967)

On January 10, 1967, Texas Gas Transmission Corporation (Applicant), filed in Docket No. CP67-198 an application, as supplemented on March 2, 1967, pursuant to Section 7(b) and Section 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of other facilities, all as more fully set forth in the application.

Applicant seeks permission and approval to abandon:

(1) The Wilmot, Arkansas, Compressor Station consisting of 7 compressor units aggregating 5400 horsepower and appurtenances thereto;

(2) The Benoit, Mississippi, Compressor Station consisting of 6 compressor units aggregating 6600 horsepower and appurtenances thereto; and

(3) The Lula, Mississippi, Compressor Station consisting of 8 compressor units aggregating 5640 horsepower and appurtenances thereto.

Applicant states that the facilities proposed to be abandoned are obsolete,[1] not as efficient as modern compressors and present maintenance problems.

Applicant also proposes to install and operate 4520 additional horsepower at its Greenville, Mississippi, Compressor Station through the installation of one new 2,000-horsepower compressor unit and the turbo-charging eight existing compressor units.

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[1] The average age of these units is 30 years.

The total estimated cost of the proposed construction is $1,651,000, which will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on May 4, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G–855 (7 FPC 213).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application, filed in the proceeding are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed installation, construction and operation of facilities, as hereinbefore described and as more fully described in the application, filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed installation, construction and operation of facilities, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant in this proceeding authorizing the construction and operation of facilities, as hereinbefore described and as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities authorized in paragraph (B) above shall be installed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## CITY OF ALBANY, WATER, GAS AND LIGHT COMMISSION AND SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP67-264

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 11, 1967)

On March 14, 1967, The Water, Gas and Light Commission of the City of Albany (Applicant), filed in Docket No. CP67-264 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing South Georgia Natural Gas Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution by Applicant to a proposed manufacturing plant in the southwest corner of Lee County, in the State of Georgia, all as more fully set forth in the application.

Applicant proposes to construct a natural gas distribution system, from a point of connection with Respondent's transmission system in Lee County, at the unincorporated community of Armena, Georgia, consisting of a pressure reducing station, an odorizing station, 1,250 feet of 4.5-inch O.D. pipe and related facilities necessary for delivery of natural gas to the proposed industrial plant of Lilliston Implement Company of Albany, Georgia (Lilliston), to be located in Armena, Lee County, Georgia. This will be an initial connection for service to Lilliston in Lee County, Georgia. Applicant does not propose to serve any other customer from this line except Lilliston. Applicant proposes to serve Lilliston at its new plant location in lieu of the service presently rendered in Albany, Georgia. Applicant's distribution system at Albany, Georgia, is also connected to Respondent's system.

Applicant estimates the maximum daily and maximum annual requirements of Lilliston in Mcf at 14.73 psia as follows:

| Year | Maximum daily requirements (Mcf) | Maximum annual requirements (Mcf) |
|---|---|---|
| 1st | 115 | 12,000 |
| 2d | 120 | 13,000 |
| 3d | 125 | 14,000 |

Applicant estimates the cost of the proposed facilities at approximately $14,750, said cost to be defrayed from cash on hand.

Respondent filed an answer in this proceeding on March 22, 1967, stating it has no objection to the granting of the requested order for service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on March 30, 1967 (32 F.R. 5387). No protest, petition to intervene, or request for hearing has been filed in this proceeding.

*The Commission finds:*

(1) South Georgia Natural Gas Company, a Georgia corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated February 18, 1953 in Docket No. G–1915 (3 FPC 516).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant and to sell and deliver to Applicant under revised service agreement to be executed by Applicant with Respondent, in accordance with the Commission's Regulations, up to 125 Mcf per day for distribution and resale, as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution by Applicant to the manufacturing plant of Lilliston Implement Company in Lee County, Georgia, within one year from the date of the issuance of this order.

(5) The requirement that Respondent serve Applicant, as requested, will not impair its ability to render adequate service to existing customers.

*The Commission orders:*

(A) South Georgia Natural Gas Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant and to sell and deliver to Applicant up to 125 Mcf of natural gas daily under a revised service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations for transportation, distribution and resale, as hereinbefore described and as more fully described in the application. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission the date of commencement of service to Applicant within 10 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## GREAT RIVER GAS COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP67–257

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 11, 1967)

On March 9, 1967, Great River Gas Company (Applicant) filed in Docket No. CP67–257 an application pursuant to Section 7(a) of the Natural Gas

Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 8,400 Mcf of natural gas per day for resale and distribution to the public in and around the municipalities of Memphis, Arbela and Granger in Scotland County; the municipalities of Luray, Kahoka, Wayland and Alexandria and the unincorporated communities of Ashton and Medill in Clark County, the municipalities of Edina and Knox City in Knox County; the municipalities of LaBelle, Lewistown, Monticello, Canton and LaGrange in Lewis County; and the unincorporated communities of West Quincy and Taylor in Marion County, all in the State of Missouri, all as more fully set forth in the application.

Applicant proposes to construct and operate pipelines extending from Respondent's point of delivery northward and to the east and west to the aforementioned eighteen communities and distribution facilities in each of the communities. These facilities aggregate approximately 29 miles of 10-inch, 71 miles of 6-inch, 32 miles of 4-inch, 43 miles of 2-inch and 64 miles of 1-inch coated and wrapped steel gas main, together with related appurtenances, services, meters and regulators.

Applicant also proposes to construct and operate an odorizing and regulating station at the point of interconnection with Respondent's facilities.

Applicant's estimated third year annual and peak day natural gas requirements are 1,143,200 Mcf and 8,400 Mcf, respectively. Respondent will sell and deliver said gas requirements to Applicant pursuant to Respondent's Rate Schedule G–2.

Applicant states that Respondent has advised that it will construct the necessary metering and regulating facilities at the proposed point of delivery and will render the requested natural gas service. The estimated cost of Respondent's metering and regulating facilities is $30,000.

Applicant has been granted certificate authority by the Missouri Public Service Commission in Docket No. 15,976 effective March 1, 1967, and franchises from each of the 14 municipalities.

The county courts of the five counties comprising the subject service area have authorized Applicant to construct natural gas distribution systems within their respective boundaries, thus authorizing Applicant to serve the four unincorporated communities.

The total estimated cost of Applicant's proposed facilities is $3,572,670. Applicant proposes to finance its cost of construction with funds furnished by its parent company, Northern Illinois Gas Company (Northern Illinois).

By order of May 25, 1966, in Docket No. 52295, the Illinois Commerce Commission authorized Northern Illinois to make equity investments in, and loans to Applicant up to an aggregate amount of $4,000,000.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

(1) Respondent, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G–200 and G–207 (3 FPC 273).

(2) Applicant, Great River Gas Company, has received authorization to render the proposed service and no additional authorization is needed to implement its proposal.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 8,400 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent, nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 8,400 Mcf of natural gas per day to Applicant for resale and distribution in the municipalities of Memphis, Arbela and Granger in Scotland County, the municipalities of Luray, Kahoka, Wayland and Alexandria and the unincorporated communities of Ashton and Medill in Clark County; the municipalities of Edina and Knox City in Knox County; the municipalities of LaBella, Lewistown, Monticello, Canton and LaGrange in Lewis County; and the unincorporated communities of West Quincy and Taylor in Marion County, all in the State of Missouri, as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within ten days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## MANTACHIE NATURAL GAS DISTRICT AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP67-169

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 11, 1967)

On December 14, 1966, Mantachie Natural Gas District (Applicant) filed in Docket No. CP67-169 an application, as supplemented on April 3, 1967, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Respondent) to establish physical connection of its facilities with facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution, all as more fully set forth in the application and supplement.

Applicant requests that the Respondent be ordered to make physical connection of its transmission facilities with the system to be constructed by Applicant and to sell and deliver volumes of natural gas for resale through Applicant's system in Mantachie, Mooresville, Dorsey, Kirkville, and Evergreen, Mississippi, and parts of Itawamba and Lee Counties, Mississippi. Applicant proposes to construct and operate distribution systems in the five communities, and adjacent rural areas, and 9.1 miles of 4-inch and 13.05 miles of 3-inch lateral transmission pipeline.

Applicant proposes to finance the project through the sale of five percent, 30-year revenue bonds in the principal amount of $1,072,000.

On December 16, 1966, Respondent was duly advised of the application filed in this proceeding, and due notice of the filing and opportunity for hearing thereon has been given by publication in the Federal Register on January 13, 1967. No protest, petition to intervene or request for hearing has been filed in this proceeding other than a petition to intervene filed by Mississippi Valley Gas Company on January 16, 1967, and withdrawn on April 11, 1967.

On January 13, 1967, Respondent filed an answer to the application and indicated therein that it has no objection to the entry of an order requiring it to establish the requested connection of its facilities and provide the requested service.

*The Commission finds:*

(1) Texas Eastern Transmission Corporation, a Delaware corporation havings its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretobefore found by the Commission in its order of October 11, 1947, in Docket No. G–880 (6 FPC 171).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Texas Eastern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant up to 1,762 Mcf of natural gas daily under a service agreement to be executed by Applicant with Texas Eastern in accordance with the Commission's Regulations.

(4) The requirement that Texas Eastern serve Applicant, as hereinafter ordered, will not place an undue burden upon Texas Eastern, require Texas Eastern to enlarge its transportation facilities, or impair Texas Eastern's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas at the proposed delivery point from Texas Eastern within one year from the date of the issuance of this order.

*The Commission orders:*

(A) Texas Eastern Transmission Corporation is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant and to sell and deliver to Applicant up to 1,762 Mcf of natural gas daily, for distribution, as hereinbefore described and as more fully described in the application and supplement thereto, under a service agreement to be executed by Applicant with Texas Eastern in accordance with the Commission's Regulations. Such service shall be rendered pursuant to Texas Eastern's presently filed appropriate rate schedule.

(B) Texas Eastern shall report to the Commission in writing the date of commencement of service to Applicant at the proposed delivery point within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## THE MONTANA POWER COMPANY, PROJECT NO. 1473

### ORDER APPROVING REVISED EXHIBIT L DRAWINGS FOR PROJECT AND MODIFYING LICENSE

(Issued May 11, 1967)

On April 25, 1966, The Montana Power Company, licensee for Project No. 1473, filed for Commission approval revised Exhibit L drawings for constructed Project No. 1473, known as Georgetown Lake Project, located on Flint Creek, a tributary of Clark Fork River, in Deer Lodge and Granite Counties, Montana, and affecting lands of the United States within the Deerlodge National Forest.

The drawings show a plan for the construction by the United States Forest Service of a two lane highway across the project dam and modifications to the dam structure made necessary thereby, Construction would consist of the placement of additional fill on the downstream embankment and extension of the concrete outlet pipe, reconstruction of the spillway, and provision for a manhole for access to the outlet pipe control valve. The surface of the proposed highway will be about 4.5 feet above the crest of the dam. The highway will replace a single lane road now crossing the dam and improve access to recreational facilities located in the vicinity of the project lake.

Certain benefits from construction of the new highway will inure to the licensee, in that an unused spillway will be renovated and 4.5 feet of additional freeboard will be made available, thereby increasing the flood handling capability of the project.

In connection with its April 25, 1966 filing and pursuant to Commission Order No. 315, issued December 27, 1965 (34 FPC 1551), the licensee filed on March 2, 1967, an independent consultant's report on the Flint Creek Dam of the project, entitled "Flint Creek Dam Safety Investigation" (dated February 1967) in which the following recommendations (paragraphs 5.7 and 6) were made in connection with construction by the U.S. Forest Service of the proposed two lane highway as shown on the revised Exhibit L drawings:

(1) Increase the thickness of concrete in the spillway chute and appropriately reinforce;

(2) Provide a properly designed filter protected drain blanket along the entire contact area between the proposed new fill and natural ground; and

(3) Provide a measuring weir in Flint Creek downstream from the new fill to measure leakage and observe turbidity.

The recommendations set forth above are necessary and reasonable refinements to the design for the proposed construction of the highway and modification of the dam structure shown on the revised Exhibit L drawings.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Deerlodge National Forest, has advised that the revised Exhibit L drawings are satisfactory.

**The Department of the Interior has recommended for inclusion in the license, a special condition to protect the downstream fishery during the proposed construction. Both the licensee and the Forest Service have offered no objection to inclusion of the special condition in the license, which is set forth herein as Article 26.**

**We are herein including a new license Article 5, which is revised to conform to the "inspection" article presently included in licenses for projects of the type herein involved and to apply to the construction in connection with the new highway across the project dam.**

*The Commission finds:*

The following described revised Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for Project No. 1473.

| Exhibit L | FPC No. 1473 | Showing |
|---|---|---|
| 2 | 12 | Typical cross section of proposed modifications. |
| 3 | 13 | Plan and profile of dam and road. |
| 4 | 14 | Plan and elevation of dam. |
| 5 | 15 | Plan and section of spillway. |
| 6 | 16 | Plan and section of manhole and valve chamber. |
| 7 | 17 | Plan, elevation, and section of outlet works. |
| 8 | 18 | Outlet works reinforcing steel. |

*The Commission orders:*

(A) The revised Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 1473.

(B) The changes reflected in the revised Exhibit L drawings shall be made in accordance with the recommendations set forth above as contained in the above-mentioned "Flint Creek Dam Safety Investigation" report dated February 1967.

(C) Article 5 of the license for Project No. 1473 is hereby revised to read as follows:

*Article 5.* The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

(D) The following article is hereby added to the license for the project:

*Article 26.* The Licensee shall take whatever precautions are necessary during construction operations to prevent the entry into Flint Creek and project waters of any undue amounts of silt, sand, gravel, or other material which may be injurious to fish and wildlife or their habitat.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORPORATION, DOCKET NO. G-2935; TEXAS GAS PIPE LINE CORPORATION, DOCKET NO. CP67-20; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP67-34

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 11, 1967)

On July 27, 1966, in Docket No. CP67-20 and on August 17, 1966, in Docket No. CP67-34, Texas Gas Pipe Line Corporation (Texas Gas) and Transcontinental Gas Pipe Line Corporation (Transco), each, respectively, filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in St. Landry Parish, Louisiana, in order to provide a new delivery point for gas sold by Texas Gas to Transco. On July 27, 1966, Union Texas Petroleum, a Division of Allied Chemical Corporation (Union), filed a petition to amend the Commission's order issuing a certificate of public convenience and necessity in Docket No. G-2935 so as to authorize an additional delivery point for the delivery of natural gas by Union to Texas Gas. The three Applicants' proposals are more fully set forth in the applications and petition in these proceedings.

Union presently gathers and processes Texas R.R. District No. 3 gas for Texas Gas who transports, sells and delivers the residue volume to Transco at a delivery point in Cameron Parish, Louisiana. The service agreement between Transco and Texas Gas provides for a contract demand of 50,000 Mcf of gas per day. Texas Gas states that it has experienced difficulty in delivering that volume regularly because of reduced volumes available to Union. To relieve this situation Union proposes to deliver by means of an exchange arrangement with Mobil Oil Corporation (Mobil) up to 30,000 Mcf of natural gas per day to Texas Gas from the Opelousas Field, St. Landry Parish, Louisiana. Mobil will supply this gas to Union and the latter will deliver like quantities to Mobil for use in a chemical plant near Beaumont, Texas.*

Union will deliver the Opelousas Field gas to Texas Gas at the outlet side of the Opelousas Plant in lieu of delivery of equivalent volumes which would otherwise be delivered to Texas Gas in Texas R.R. District No. 3. Texas Gas proposes to construct and operate 7.6 miles of 8⅝ inch pipeline from the Opelousas Plant to Transco's line in the Washington Field in St. Landry Parish. Transco will install a purchase meter and tap on its line.

Several petitions to intervene have been filed in these proceedings; however, such petitions have either been withdrawn or Petitioners state that they do not request formal hearing and do not object to the disposition of these matters pursuant to the statutory hearing procedure.

Due notice of the filing of the petition to amend in Docket No. G-2935 and opportunity for hearing thereon has been given by publication in the Federal Register on August 17, 1966 (31 F.R. 10933). No protest or other petition to intervene has been filed in said docket.

After due notice, no other petitions to intervene, notice of intervention or protest to the granting of the applications in Docket Nos. CP67-20 and CP67-34 have been filed.

At a hearing held on May 4, 1967, the Commission on its own motion received and made a part of the record in Docket Nos. CP67-20 and CP67-34 all evidence, including the applications and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Texas Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1954, in Docket No. G-2405 (13 FPC 1653).

(2) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 145).

(3) The facilities hereinbefore described, as more fully described in the applications in Docket Nos. CP67-20 and CP67-34, are to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Transco and Texas Gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Transco and Texas Gas are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the

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* Since there is a possibility that Mobil may be unable to utilize volumes equivalent to those actually delivered to Union in Louisiana, Union has agreed to purchase the volumes in Louisiana which in any given month exceed a cumulative take deficiency (on the part of Mobil) of 3,600,000 Mcf. Should this take place, Mobil should file for authorization to sell gas to Union.

Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Texas Gas and Transco are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Texas Gas' and Transco's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issuing a certificate of public convenience and necessity in Docket No. G-2935 be amended as hereinafter ordered.

*The Commission orders:*

(A) Certificates of public convenience and necessity are issued authorizing Applicants, Texas Gas Pipe Line Corporation and Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities for the transportation and/or sale of natural gas as hereinbefore described, all as more fully described in the applications in Docket Nos. CP67-20 and CP67-34, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) Texas Gas shall make appropriate tariff filings to reflect the new delivery point hereinabove authorized.

(E) The Commission's order issuing a certificate of public convenience and necessity in Docket No. G-2935 is amended so as to authorize the proposed additional delivery point for the delivery of South Louisiana natural gas by Union to Texas Gas, all as hereinbefore described and as set forth in the petition to amend in Docket No. G-2935.

(F) Union shall file, as supplements to its FPC Gas Rate Schedule No. 70, copies of the letter agreement, dated July 21, 1966, providing for the establishment of the additional delivery point, and, as a separate rate schedule, Union shall file copies of the exchange agreement, dated November 1, 1965, between Union and Mobil.

(G) In the event that Union must purchase gas exceeding the cumulative take deficiency of Mobil, Mobil shall first receive certificate authorization for such sale and shall make any appropriate rate filings prior to selling said excess volumes of gas to Union.

(H) In all other respects said order in Docket No. G-2935 shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## APPLICATIONS FOR VACATION OF POWER SITE WITHDRAWALS AND FOR DETERMINATIONS UNDER SECTION 24 OF THE FEDERAL POWER ACT, DOCKET NO. R-323

## ORDER NO. 346

### AMENDING § 25.1 OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued May 12, 1967)*

The Commission has reviewed its procedures with respect to applications for vacation of power site withdrawals and determinations under Section 24 of the Federal Power Act in an effort to expedite the processing of such applications. Consultation with the Department of the Interior and other interested agencies has resulted in an understanding between the Commission and the Secretary of the Interior with respect to procedures for processing various applications relating to lands of the United States withdrawn for the development of electric power. In order to implement these procedures we are amending Part 25 of the Regulations under the Federal Power Act to provide that applications involving such lands which have been withdrawn pursuant to Section 24 of the Act, classified by the Geological Survey or otherwise withdrawn for power purposes be directed to the Bureau of Land Management, Department of the Interior, or in the case of National Forest Lands, to the U.S. Forest Service, Department of Agriculture.

Under the amended procedure, the Bureau of Land Management would advise an applicant in the event the lands included in the application are not available for disposal under the public land laws without regard to their power withdrawal. In such cases, where any action this Commission might take under Section 24 would not result in making the lands involved subject to disposal, the Bureau of Land Management would not request that a Section 24 determination be made. In all other cases, the Bureau of Land Management (or the Forest Service if National Forest Lands are involved) would apply to the Commission for a Section 24 determination. The procedure contemplates that the results of an investigation by the Geological Survey would be transmitted to the Commission together with the application involving lands which have been withdrawn for power purposes by the Department of the Interior.

The practice of having a Federal agency apply to the Commission for a section 24 determination when a third party seeks to acquire Government lands withdrawn for power purposes has been followed for some years by the Forest Service in connection with National Forest Land exchanges. The effect of the proposed change in § 25.1 would be merely to apply this procedure uniformly to all future applications under section 24.

It appears that the amendment hereinafter adopted pertains to Commission practice and procedure and hence that the notice and effective date provisions of section 4 of the Administrative Procedure Act are not applicable.

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* Published in the Federal Register on May 20, 1967 (32 F.R. 7495).

*The Commission finds:*

(1) The amendment hereinafter adopted is necessary and appropriate for the purposes of administration of the Federal Power Act.

(2) Good cause exists that the amendment herein adopted becomes effective forthwith.

*The Commission,* acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 24 and 309 thereof (41 Stat. 1075; 49 Stat. 846, 858; 62 Stat. 275; 16 U.S.C. 818, 825 (h)), *orders:*

(A) Part 25, Subchapter B, Chapter I, Title 18 of the Code of Federal Regulations is amended by revising the first sentence of § 25.1. As amended, the section reads as follows:

> § 25.1 Contents of application.
>
> Any application for vacation of a reservation effected by the filing of an application for preliminary permit or license, or for a determination under the provisions of section 24 of the Act permitting restoration for location, entry, or selection under the public lands laws, or such lands reserved or classified as power sites shall, unless the subject lands are National Forest Lands, be filed with the Bureau of Land Management, Department of the Interior, at the Bureau's office in Washington, D.C. or at the appropriate regional or field office of the Bureau. If the lands included in such application are National Forest Lands, the application shall be filed with the United States Forest Service, Department of Agriculture at the Forest Service's office in Washington, D.C., or at the appropriate regional office of the U.S. Forest Service.

(B) The amendment herein adopted shall become effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7129

### SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued May 12, 1967)

By order issued February 14, 1964, 31 FPC 414, in the above-entitled matter, the Commission, pursuant to Section 204 of the Federal Power Act, authorized Pacific Power & Light Company (Applicant) to issue, pursuant to a Credit Agreement of October 1, 1963 between Applicant and eight banks, unsecured Promissory Notes in the aggregate principal amount of $45,000,000 outstanding at any one time upon terms and conditions set forth in the order, which include, among other things, those set forth in the application, filed September 30, 1963, requesting such authorization. The order, by its terms, provided that the Notes were to be dated as of the dates of the borrowings and they were to mature 11 months after date of issue or on September 30, 1965, whichever shall be earlier.

The Commission, in a supplemental order, issued on June 3, 1965, 33 FPC 1207, authorized extension of the final maturity date for the notes to June 30, 1967 pursuant to the Applicant's "Amendment No. 1 to Application", filed on March 23, 1965.

The Applicant, in an "Amendment No. 2 to Application," filed on March 27, 1967, has informed the Commission that its Credit Agreement of October 1, 1963, as amended by its Letter Agreement of March 10, 1965, has been further amended by a new Letter Agreement of March 15, 1967. Under this new Letter Agreement, the Applicant has the right to continue to issue short-term notes up to $45,000,000 outstanding at any one time, under the same terms and conditions, with the exception of the extension of the final maturity date for the notes from June 30, 1967 to December 31, 1968. Among the aforesaid terms and conditions is a requirement that the notes bear interest at the prime rate in effect at the time of the borrowings with a commitment fee of one fourth of 1% per annum on unused available credit. In this "Amendment No. 2 to Application," the Commission has been requested to extend the final maturity date for the notes to December 31, 1968. This request is the subject of this order.

The notes issued under this credit agreement have been and will be discharged with proceeds from permanent financing.

The notes which the Applicant proposes to issue with a new final maturity date are to be issued to refund about $15,000,000 in notes outstanding and to provide a portion of the funds for the Applicant's construction program which has estimated costs of $43,459,000 for 1967 and $42,473,000 for 1968. The principal items in this program include $5 million for construction of the 15 mw Green River Steam Plant, Unit No. 1, $3.5 million for construction of 230 kv transmission facilities from Enterprise Oregon to Walla Walla, Washington, $2.7 million for work on the Malin 500 kv switching station, $1.3 million for the Centralia steam plant and $38.6 million for distribution facilities.

Applicant does not request any other changes in the authorization heretofore granted in this matter.

Written notice of the filing of this application has been given to the California Public Utilities Commission, the Public Utilities Commission of Idaho, the Public Service Commission of Montana, the Utilities and Transportation Commission of Washington, the Public Service Commission of Wyoming, the Public Utility Commissioner of Oregon and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on April 18, 1967 (32 F.R. 6111), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before April 25, 1967, with the Federal Power Commission, Washington, D.C. 20426. The state commissions of Washington, California, Montana and Idaho have approved this transaction. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Good cause has been shown and it is necessary and appropriate for the purposes of the Act that Paragraph (B) of the Commission's order issued February 14, 1964, be modified as hereinafter provided.

(2) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) Paragraph (B) of the Commission's order issued February 14, 1964, as amended by order issued June 3, 1965, in the above-entitled docket is amended to read as follows:

> (B) This authorization is expressly conditioned upon the final maturity of all Notes to be issued pursuant hereto being not later than December 31, 1968.

(B) All other terms and conditions as set forth in Paragraphs (A), (C) and (D) of the aforesaid Commission order issued February 14, 1964 shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## PEND OREILLE MINES & METALS CO., PROJECT NO. 1393 AND CITY OF SEATTLE, WASHINGTON, PROJECT NO. 2144

### ORDER RELIEVING LICENSEE OF CERTAIN OBLIGATIONS AND PERMITTING WITHDRAWAL OF APPLICATION FOR LICENSE

(Issued May 12, 1967)

Pend Oreille Mines and Metals Co., (Pend Oreille) filed an application on April 16, 1962 for a renewal of its license for Project No. 1393. Pend Oreille filed on April 21, 1967, a notice of withdrawal of its application for a renewal of its license, effective as of May 15, 1967, subject to Commission approval.

The license for Project No. 1393 contains the following articles:

> ARTICLE 27: The right, power, and authority is reserved to the Commission to issue a license to construct, operate and maintain a hydroelectric project which will more completely utilize the water resources of the section of Pend Oreille River in which this project is located.
>
> ARTICLE 28: The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States, or the person or persons hereafter constructing, operating and maintaining such more complete hydroelectric project or his or their successors and assigns, that said Licensee its successors or assigns shall not be entitled to any compensation for damages sustained by reason of inundation or destruction of the project or project works, provided said Licensee, its successors or assigns shall be entitled to receive from said more complete hydroelectric development an amount of electric capacity and energy equal to that generated by this project before surrender of said license at rates to be fixed by duly constituted authority.

The City of Seattle (Seattle) was issued a license for a more complete hydroelectric project on the Pend Oreille River on July 10, 1961, Project No. 2144, 26 FPC 54. That license contains the following article:

> ARTICLE 45: The Licensee shall make available to Pend Oreille Mines & Metals Co. an amount of electric capacity and energy at Metaline Falls equal to that generated by the existing Metaline Falls Project No. 1393 * * *.

It is anticipated that Project No. 1393 will cease operations on May 15, 1967. In any event, the reservoir of Project No. 2144 is scheduled to commence filling about July 1, 1967 and one generating unit is to commence operations about August 1, 1967.

According to Pend Oreille's filing of April 21, 1967, Seattle and Pend Oreille have entered into an agreement, pursuant to which Seattle will pay a sum of $796,000, subject to certain adjustments, to Pend Oreille in exchange for certain rights and property including nonproject property. By virtue of that agreement and payment Seattle will be released from any obligation under Article 28 of Project No. 1393 or Article 45 of Project No. 2144 to make available to Pend Oreille an amount of electric capacity and energy at Metaline

Falls equal to that generated by the existing Metaline Falls Project No. 1393, and will be released from any other possible obligation to reimburse Pend Oreille for the taking, damaging, destruction or inundation of certain property of Pend Oreille.

Seattle which filed a petition to intervene in the proceeding in Project No. 1393 on June 28, 1962, has joined with Pend Oreille in its present filing and asks leave to withdraw the City's petition to intervene.

Seattle and Pend Oreille jointly represent that their agreement constitutes full satisfaction of any obligations, either express or implied, occasioned by Article 28 of Project No. 1393 and Article 45 of Project No. 2144 to provide Pend Oreille with electric capacity and energy.

The annual charges for Project No. 1393 have been paid through December 31, 1961.

*The Commission finds:*

Under the circumstances of this case it is appropriate and in the public interest to permit Pend Oreille to withdraw its application for renewal of license for Project No. 1393, to approve Seattle's withdrawal of its petition to intervene in Project No. 1393, to terminate the proceeding in that Project as of May 15, 1967, and to enter an order discharging Seattle from any obligations, either express or implied, occasioned by Article 28 of Project No. 1393 and Article 45 of Project No. 2144, to provide Pend Oreille with electric capacity or energy.

*The Commission orders:*

(A) Permission is given to Pend Oreille to withdraw its application for renewal of License in Project No. 1393 and the proceeding is terminated as of May 15, 1967.

(B) Seattle's request to withdraw its petition to intervene in Project No. 1393 is granted.

(C) Seattle is hereby discharged from any obligations, either express or implied, occasioned by Article 28 of Project No. 1393 and Article 45 of Project No. 2144, to provide Pend Oreille with electric capacity or energy.

(D) This order is subject to the payment of annual charges for Project No. 1393 from December 31, 1961 until its operations are discontinued.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-169 (PHASE II)

### FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 15, 1967)

On March 13, 1967, Natural Gas Pipeline Company of America (Petitioner) filed in Docket No. CP66-169 (Phase II), as supplemented on April 5, 1967, a petition to amend the Commission's order issued December 30, 1966, 36 FPC 1168, in said docket and phase, so as to authorize Petitioner to construct and operate additional natural gas facilities to increase its transmission system capacity by 41,600 Mcf * of natural gas per day over and above the expansion authorized by the Commission in the order of December 30, 1966, all as more fully set forth in the petition to amend, as supplemented, in this proceeding.

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* Volumes stated at 14.65 psia and 1,000 Btu per cubic foot.

The order of December 30, 1966, among other things, authorized Petitioner to construct and operate certain natural gas facilities for the purpose of expanding its overall system capacity by 156,000 Mcf * per day. Petitioner states that nearly all of its remaining uncommitted capacity will be required to meet additional firm demands of its customers prior to the advent of the 1967–68 heating season, and, therefore, it proposes to construct the additional facilities providing for the increased additional capacity in order to have sufficient uncommitted capacity to meet expected customer requirements during the 1967–68 heating season.

Specifically, Petitioner proposes the following:

(a) To construct and operate ten segments of 36-inch mainline loop ranging from 4.52 miles to 8.66 miles in length and aggregating in toto 63.3 miles of line to be installed on its existing Gulf Coast Line in Texas, Arkansas, Missouri and Illinois, and

(b) To make minor modifications of header piping at Station No. 308 in Randolph County, Arkansas.

The estimated cost of the proposed additional facilities is $10,458,000, which cost will be financed by short term borrowings pending permanent financing.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 31, 1967 (32 F.R. 5438). No protest or petition to intervene has been filed in this proceeding.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 30, 1966, in Docket No. CP66–169 (Phase II) be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued December 30, 1966, in Docket No. CP66–169 (Phase II) is amended by authorizing the construction and operation of the proposed additional natural gas transmission facilities as hereinbefore described and as set forth in the petition to amend, as supplemented.

(B) In all other respects said order shall remain in full force and effect.

*Volumes stated at 14.65 psia and 1,000 Btu per cubic foot.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## RATE SCHEDULES OF PUBLIC UTILITIES, DOCKET NO. R–324

## ORDER NO. 347

### STATEMENT OF POLICY

(Issued May 15, 1967)*

Commission experience in administering the rate and service regulatory provisions of the Federal Power Act indicates several areas within which public utilities may take voluntary action in changing the format and style of filed rate schedules to achieve more uniformity and simplicity. Under the Commission's regulations governing the filing of rate schedules pursuant to the Act, latitude is afforded filing parties in their choice of the physical document to be submitted.[1] In processing the rate schedules now filed with the Commission it has been noted that systems filing a standardized format achieve clerical and administrative simplicity. Similar benefits have accrued to the Commission in discharging its administrative responsibilities. This policy statement is intended to apprise all companies of these results and to facilitate voluntary adoption of similar procedures by all systems. In doing so, the Commission recognizes that the individual filing parties must review their specific facts and circumstances and may choose to continue existing practices. Suggested revisions in format and style of rate schedules are set forth below.

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* Published in the Federal Register on May 20, 1967 (32 F.R. 7494).

The Commssion, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 205, 206 and 309 thereof (49 Stat. 851, 852, 858; 16 U.S.C. 824d, 824e, 825h), *orders:*

(A) Part 2, General Policy and Interpretations, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding a new § 2.8 to read as follows:

§ 2.8 Simplification of wholesale electric rate schedule filings.

(a) In making changes in rate schedules required to be on file with the Commission, public utilities may find it advantageous to file substitute sheets to reflect changes, in lieu of filing rate schedule supplements.

(1) *Identification—Substitute Sheets:*

(i) At the top right of the page, the sheet number may be designated as "—— Revised Sheet No. ——," followed by "Superseding —— Sheet No. ——." The first of these blanks would show the number of the revision (i.e., First, Second, etc.) and the sheet number would be the same as the sheet replaced. The third and fourth blanks would be filled according to the numbering of the sheet replaced.

(ii) Sheets which are to be inserted between two consecutively numbered sheets may be designated "Original Sheet No. ——," with the blank space filled with the appropriate number and a letter to indicate an insertion (*i.e.*, between Sheet Nos. 1 and 2, Original Sheet No. 1a).

(iii) Customer agreement, if required, may be indicated on the bottom of the page, by the signature of the person authorized to agree to the proposed change. The name and title of the person authorized to file the substitute sheet may also be shown on the bottom of the page.

(b) Whenever pursuant to § 35.12 of this chapter an initial rate schedule filing is to be made, or whenever pursuant to Section 35.13 of this chapter a rate schedule is to be replaced in its entirety or extensively revised (for example if a large number of the pages are to be changed), public utilities may find it advantageous to use a simplified format, such as the following:

(1) *Format.* A brief service agreement setting forth such items as the name of the purchaser, service to be rendered, term of the agreement, and signatures of the parties. Applicable points of delivery and delivery volt-

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[1] Section 35.2(b) of the Commission's Regulations under the Federal Power Act defines "rate schedule" as follows:

The term "rate schedule" as used herein shall mean a statement of (1) electric service as defined in paragraph (a) of this section, (2) rates and charges for or in connection with that service, and (3) all classifications, practices, rules, regulations or contracts which in any manner affect or relate to the aforementioned service, rates, and charges. This statement shall be in writing and may take the physical form of a contractual document, purchase or sale agreement, lease of facilities, tariff or other writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part hereof.

ages, applicable rates and charges and applicable terms and conditions may be incorporated in the agreement by reference to separate appendices attached thereto as follows:

(i) Appendix setting forth in detail delivery points, delivery voltages and metering voltages.

(ii) Appendix containing a statement of the rates and charges, set forth separately under appropriate headings such as: demand charges, energy charges, billing demand determinants, power factor clauses, minimum bill provisions, etc.

(iii) Appendix containing terms and conditions, set forth separately under appropriate headings such as: services, facilities at the points of connection, meter adjustments, continuity of service, liability, etc.

(2) *Identification.*

(i) At the top right of the page, the sheet number may be designated as "Original Sheet No. ——."

(ii) Sheets which are to be replaced or inserted may be designated in the same manner suggested in (a)(1) above.

(Sections 205, 206, 309, 49 Stat. 851, 852, 858; 16 U.S.C. 824d, 824e, 825h)

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## ROCKY MOUNTAIN POWER COMPANY, PROJECT NO. 2289

### ORDER CONFIRMING DISMISSAL OF APPLICATION AND DENYING APPLICATION FOR REINSTATEMENT

(Issued May 15, 1967)

On February 16, 1967, the Commission granted a motion to dismiss Rocky Mountain Power Company's application for license of a hydroelectric project in Colorado (Opinion No. 514, 37 FPC 329). The Commission determined that Applicant had failed to show the financial feasibility of the project and that it also had failed to show that a market existed for the power. Nebraska Power Review Board (Board) was granted intervention at the same time.

On March 13, 1967, the Board filed a motion for reconsideration of the Commission's order of dismissal. On March 20, 1967, Applicant filed an "Application for Reconsideration of Application." On April 12, 1967, we granted the motion and application for reconsideration for the purpose of allowing full and adequate consideration, without reinstating the application.

The Nebraska Power Review Board's motion for reconsideration reiterates its concern over the power deficiency which it believes will exist in Nebraska during the coming summer and for a number of years thereafter. It also cites a mandatory wheeling bill which at the time of filing was being considered by the legislature which would facilitate the importation of power from out-of-state sources. In view of these considerations, it requests that we keep this proceeding open for further market evidence.

We appreciate the concern of the Board over the power supply situation in Nebraska and we would not take any action which would adversely affect that situation. However, as stated in Opinion No. 514 there is in this record no basis for concluding that this project would serve to meet that deficiency,[1] nor that the prospective power deficiency would assure that Rocky Mountain Power Company will have either a sufficient market or the firm contracts which would enable it to finance the project.

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[1] Legislative Bills 319 and 620, the mandatory wheeling measures pending in the 77th session of the Nebraska Legislature were not enacted during that session.

Applicant alleges that it is diligently pursuing contract negotiations with Consumers Public Power District for the sale of power in Nebraska and, in addition, that it has presented to the Missouri Basin Systems Group proposals and plans by means of which project power could be used in combination with other power-producing facilities available to the Missouri Basin Systems Group to serve all of the power users in the deficient areas of Nebraska and neighboring states. However, all of these plans are still in the proposal stage and Applicant has put forward no tangible evidence which would allow us to reasonably conclude that, based on its present efforts, a market exists or will exist for project power.

Applicant does not ask us to continue the hearing at this time, but merely to hold the record open for an additional period during which it might be able to produce firm commitments and evidence of financing. The Applicant would thus have us place the proceedings in the same status as existed prior to the Commission's order of August 19, 1965, which set this matter for hearing, 34 FPC 539.

Applicant has had more than five years to collect, and full opportunity at hearing to present, evidence of financial feasibility and marketability and has still failed to make the proper showing. Therefore, to allow these proceedings to hang in abeyance while Applicant attempts once again to meet the requisite evidence would only thwart the administrative process and would be inconsistent with our statutory duties.

Applicant states that it has negotiated contracts with proposed oil shale developers for the use of water after it has served power purposes. These latter contracts might conceivably bear upon the economic feasibility of the project if that were a marginal matter, but in the absence of any showing of markets or financing they are certainly not enough to warrant further continuance of this proceeding.

We again emphasize that our action in dismissing this application is without prejudice to the filing of a new application at any time in the future Applicant believes it can meet the threshold requirements.

*The Commission finds:*

The assignments of error and grounds for rehearing or reconsideration set forth in the Motion for Reconsideration filed herein by Nebraska Power Review Board and the Application for Reconsideration of Order of Dismissal and for Reinstatement of Application filed herein by Applicant present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 514 and accompanying order.

*The Commission orders:*

Upon reconsideration, the Order of Dismissal of February 16, 1967, is confirmed, and the motion for reinstatement of application filed herein by Applicant is denied.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

The grounds stated by the majority's order denying reconsideration to Rocky Mountain (applicant) lead me to add to my original dissent in this matter.

In the order issued in February, 1967, the majority felt "it incumbent upon [themselves] to bear in mind the present and *potential* needs and supplies of power in Nebraska in disposing of this application."[1] Since the issuance of the majority's initial decision, the Nebraska Power Review Board, which is an intervenor in these proceedings, has emphatically asked the Commission in a motion for reconsideration "to keep said application open" so the applicant would be given an opportunity to present additional evidence and continue negotiations with Consumers Public Power District and other Nebraska suppliers. The Board's motion clearly states that Nebraska's electrical deficiency is of a long-term nature and will not be taken care of by the proposed generation facilities within the state and enumerated by the majority. Indeed, the Nebraska legislature is presently considering a bill involving wheeling that "would make feasible the *importation* of *desperately needed* low-cost power" from out-of-state facilities like the applicant's.

What more does the majority need to allow the case to proceed? Certainly, the Commission's own regulations contemplate no such rigorous standard as the majority is imposing upon the present applicant. Regulation 4.40(i) of the Federal Power Act states:

> * * * In case the applicant can give no positive assurance that there is or will be a demand for the power upon completion of construction of the project, and that it will be used or distributed by the applicant or sold to others for use or distribution, a full and complete statement and explanation shall be made of the applicant's *expectations* in this regard and of the basis therefor. [Emphasis added]

I recognize that this is a regulation pertaining to the filing of an application, but at what point does the applicant's burden become the more substantive burden that the majority seems to require in this case? The rules do not so state; if the majority intends, however, that every licensee be required to meet a more rigorous showing than that implied in Regulation 4.40(i) during the course of its license proceeding, the rules should be so amended to state explicitly to the applicant its obligations.

Furthermore, it seems to me that the majority's rationale here, in essence, eliminates the possibility for a "middle man" in the power supply field. By dismissing applicant's case because there is no definite indication that "users * * * in Nebraska will purchase an amount" from the project, the majority seems to tie the feasibility of a project to the load growth of one utility or a formal group of utilities. However, because of restrictions on the location of their facilities within the boundaries of the state or because they are unable to enter into contracts with non-contiguous territories by operation of state law, the utilities may not be able to undertake certain economical projects. Such projects can often be built by "middle men," like the applicant. Such middle men may be able to draw upon various buyers in the area, often enhancing the development of the project. There are benefits to the buyers, too, who can buy in lesser quantities more tailored to their individual needs and still share in the benefits stemming from large-scale operations. In this very case, the applicant states that in November of 1966 it presented its proposal, by invitation, before the Missouri Basin Systems Group, a planning organization representing numerous municipalities and cooperatives in Minnesota, Nebraska, North Dakota, Colorado, Iowa, Montana, South Dakota, as well as the U.S. Bureau of Reclamation.

Negotiations for power sales are time-consuming, and the orderly procedure of Commission business must be maintained. However, the Commission is aware of the power shortage in the area and has itself emphasized the need for long-range plans to meet increasing power demands.

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[1] Page 333 of majority opinion. [Emphasis added.]

One other consideration is worth noting. In addition to the considerable time and expense already expended on this case by the applicant, the power suppliers, the courts, the Forest Service, the state commissions, the Interior Department and this Commission, the applicant has finally been able to secure a favorable adjudication of its water rights, giving it priority over the claims of another party. Dismissing the case now may deprive the applicant of an essential element in the successful presentation of its license application. For all these reasons, I would dissent.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SACRAMENTO MUNICIPAL UTILITY DISTRICT, PROJECT NO. 2101

### ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued May 15, 1967)

Application was filed on July 14, 1966 by Sacramento Municipal Utility District, licensee for Project No. 2101, for further amendment of its license for the project, known as Upper American River Project, located on tributaries of the American River in El Dorado County, California, and affecting lands of the United States within El Dorado National Forest.

The application seeks Commission authorization to complete the Loon Lake Development on Gerle Creek by the installation of hydroelectric facilities having a capacity of 80,750 kw. License Article 44 provides, among other things, that the Loon Lake hydroelectric facilities shall be constructed as a part of the project "at such time as the Commission may direct." Licensee, seeing a need for additional capacity, desires Commission authorization to proceed now with construction of such facilities. The Loon Lake dam has been completed. As presently proposed, the Loon Lake Development will be constructed generally as described in the license for the project, and as more fully set forth in paragraph (B) below. On the basis of Commission staff analysis, it appears that the Loon Lake Development will be a safe and an economic addition to the existing project works.

According to staff studies, the total annual cost, including operation, maintenance and administration, of the Loon Lake power facilities is estimated to be $1,132,000. The estimated value of power exceeds the estimated annual cost by amounts ranging from $337,000 to $85,000 based upon alternative sources of power.

One of the effects of this amendment will be to increase the installed generating capacity of the entire project by 80,750 kw, or by 107,700 horsepower, with a resultant increase in the annual administrative charge.

The Chief, Forest Service, has advised that the location of the project works comprising the Loon Lake Development, as shown on the exhibits filed as part of the application for amendment, are satisfactory for the protection and utilization of the National Forest lands involved.

The Department of the Interior, in commenting on the application, has advised that the proposed construction will not affect significantly fish and wildlife resources, provided that construction activities and spoil disposition within Gerle Creek drainage do not result in undue water pollution, and the project operation does not interfere with established minimum flow releases for fish, as provided for under license. See license Articles 29 and 57 (18 FPC 228, 234–235) and (31 FPC 473, 475). The Department requested that the

U.S. Forest Service, the California Department of Fish and Game, and the Department's Bureau of Sport Fisheries and Wildlife be given an opportunity to review and comment on the final plans for the completion and the operation of the Loon Lake Development to insure ample protection of fish and wildlife resources affected by the project. Since these agencies have had an opportunity to report on such final plans, apparently the Department is requesting that those agencies be afforded an opportunity to review and comment on detailed construction plans. This is provided for by license Article 59 herein.

*The Commission finds:*

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) Construction of the proposed additional project works at the Loon Lake Development is economically sound and in the public interest.

(3) The following designated and described exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project:

| Exhibit | FPC No. 2101 | Showing |
|---|---|---|
| L-131 | 227 | Plan and profile. |
| L-132 | 228 | Machine hall sections. |
| L-133 | 229 | Generator floor plan. |
| L-134 | 230 | Plan at distributor centerline. |

Exhibit M-7 consisting of two typewritten sheets entitled "General Description of Equipment."

(4) The authorized installed horsepower capacity of the project under this amendment is increased to 814,300 horsepower, and the increased annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, as hereinafter provided, is reasonable.

*The Commission orders:*

(A) The exhibits designated and described in finding (3) above are hereby approved as part of the license for Project No. 2101.

(B) The licensee for Project No. 2101 is hereby authorized to proceed with the completion of construction of the Loon Lake Development of the project and the Loon Lake Development is redescribed as consisting of: a rock-fill dam with impervious core, designated Loon Lake Dam, approximately 2,265 feet long and about 105 feet high above streambed with a side-channel spillway and ogee weir about 250 feet long on the right bank, an earth-fill auxiliary dam approximately 910 feet long and about 82 feet high and a dike creating a reservoir with storage capacity of about 76,500 acre-feet at maximum normal water surface elevation of 6,410 feet, a 1,050-foot long 10-foot diameter vertical power tunnel to an underground powerhouse containing one 80,750 kw generator, an 18-foot by 18-foot, 20,000-foot long modified horseshoe tailrace tunnel to Gerle Reservoir, and project access roads with 66-foot wide right-of-way extending from the northern terminus of the Eastside Road in NE¼ of Section 3, T. 12 N., R. 14 E., Mount Diablo Base Meridian, to the vicinity of the southernmost bay of Loon Lake Reservoir thence around the west side of the reservoir, across the auxiliary dam to and across Loon Lake Dam.

(C) Article 46 (a) of the license is hereby further amended effective as of April 1, 1967, by substituting "(814,300 horsepower)" for "(706,600 horsepower)" as the presently authorized installed capacity of the project.

(D) The following additional articles are hereby added to the license:

*Article 59.* The Licensee shall, in the interest of preventing undue water pollution and protecting fish and wildlife resources, consult with the U.S. Forest Service, the California Department of Fish and Game and the Bureau of Sport Fisheries and Wildlife of the Department of the Interior, in the preparation of detailed plans for construction and operation of the Loon Lake Development. In the event the licensee and these agencies or any of them are unable to agree on any feature of the detailed plans such disagreement shall be resolved by the Commission after notice and opportunity for hearing.

*Article 60.* The Licensee shall commence construction of the remaining project works comprising the Loon Lake Development within one year of the date of issuance of this order and shall thereafter in good faith and with due diligence prosecute such construction, and shall complete such construction within three years of the date of issuance of this order.

(E) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## CONSOLIDATED GAS SUPPLY CORPORATION, DOCKET NO. CP67-254

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1967)

On March 7, 1967, Consolidated Gas Supply Corporation (Applicant) filed in Docket No. CP67-254 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas storage facilities, all as more fully set forth in the application.

Specifically, Applicant proposes the construction and operation of a 4,000 horsepower reciprocating engine driven compressor and related equipment at its Lightburn Compressor Station in order to increase the maximum seasonal withdrawals from its Fink-Kennedy Storage Pools located in Harrison and Lewis Counties, West Virginia. The increased withdrawals will be used to meet Applicant's market requirements during colder than normal winter periods. No new sales or services are proposed.

Applicant's Lightburn Compressor Station, presently containing two 2,000 horsepower engines, was constructed pursuant to certificate authorization issued by the Commission to Hope Natural Gas Company on August 12, 1963, in Docket No. CP63-311, 30 FPC 468.[1]

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[1] On April 1, 1965, Hope Natural Gas Company's name was changed to Consolidated Gas Supply Corporation.

The present Fink-Kennedy storage facilities are capable of meeting 7.4 billion cubic feet of additional requirements during colder than normal winter periods. With the facilities proposed, an additional 5.9 billion cubic feet of requirements can be met for a total of 13.3 billion cubic feet.

The total estimated cost of Applicant's proposed facilities is $1,050,000. Applicant proposes to finance this cost from funds on hand and from funds to be obtained from its parent corporation, Consolidated Natural Gas Company.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

At a hearing held on May 11, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Consolidated Gas Supply Corporation, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 26, 1942, in Docket No. G-100 (3 FPC 151).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Consolidated Gas Supply Corporation, to construct and operate the proposed facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 8 months from the date on which this order issues.

**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.**

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP67-227

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1967)

On February 13, 1967, El Paso Natural Gas Company (Applicant) filed in Docket No. CP67-227 an application and supplement thereto on April 12, 1967, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to Cascade Natural Gas Corporation (Cascade), all as more fully set forth in the application and supplement.

Applicant proposes to construct and operate a positive displacement measuring and regulation station and necessary appurtenances at a point adjacent to its 6⅝ inch O.D. Wenatchee lateral pipeline located in Chelan County, Washington. Cascade proposes to construct and operate approximately 500 feet of 4-inch main, an odorizer, regulator and two sales meters, from Applicant's site of proposed construction to the Kawecki Chemical Company (Kawecki) which will use the natural gas for space heating and in its aluminum alloying reverberatory furnaces as a processing fuel.

Applicant estimates the cost of the proposed construction at approximately $8,240 and Applicant will finance said construction out of working funds.

Applicant will sell to Cascade under its appropriate effective Rate Schedule DS-1 at 4.5 cents per therm and/or Rate Schedule I-1 at 2.86 cents per therm, now on file with the Commission.

On March 29, 1967, Applicant filed revised Exhibits A and B to its firm service agreement and revised Exhibit B to the interruptible service agreement with Cascade, and requested in connection therewith that the effective date thereof be the date of issuance of our order herein. Since initial deliveries will be at some date subsequent to the order, the effective date shall be the date of first deliveries.

The requirements of Cascade for the first three full years of operation are stated to be:

| | First 3 full years | | |
|---|---|---|---|
| | 1968 | 1969 | 1970 |
| PEAK DAY REQUIREMENTS—THERMS | | | |
| Industrial: [1] | | | |
| Firm | 700 | 700 | 700 |
| Interruptible | 4,000 | 4,000 | 4,000 |
| Total—Therms | 4,700 | 4,700 | 4,700 |
| Total—Mcf at 14.73 psia (1,060 Btu/cu.ft.) | 443 | 443 | 443 |
| ANNUAL REQUIREMENTS—THERMS | | | |
| Industrial: [1] | | | |
| Firm | 86,500 | 86,500 | 86,500 |
| Interruptible | 1,314,000 | 1,314,000 | 1,314,000 |
| Total—Therms | 1,400,500 | 1,400,500 | 1,400,500 |
| Total—Mcf at 14.73 psia (1,060 Btu/cu.ft.) | 132,122 | 132,122 | 132,122 |

[1] Kawecki Chemical Co.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The proposed construction and operation of facilities, and sale of natural gas as hereinbefore described, and as more fully described in the application, supplement, and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities, and sale of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) It is appropriate in the administration of the Natural Gas Act and in the public interest to accept for filing Applicant's revised Exhibits A and B to its firm service agreement and the revised Exhibit B to the interruptible service agreement with Cascade, to be effective on the date of first deliveries to Cascade.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, and the sale of natural gas as hereinbefore described and as more fully described in the application, supplement, and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

(D) Applicant's revised Exhibits A and B to its firm service agreement (under Applicant's Rate Schedule DS-1) and the revised Exhibit B to the interruptible service agreement (under Applicant's Rate Schedule I-1) with Cascade are accepted for filing effective on the date of first deliveries to Cascade.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## INTERSTATE POWER COMPANY, DOCKET NO. E-7345

### SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued May 16, 1967)

By order issued April 28, 1967, 37 FPC 824, in the above-entitled matter, the Commission authorized Interstate Power Company (Applicant), to issue and sell at competitive bidding $17,000,000 principal amount of First Mortgage Bonds, due 1967, subject among others, to the provisions set forth in paragraph (B) of that order as follows:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant on May 16, 1967, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Halsey, Stuart & Co. Inc. to purchase the proposed issuance of $17,000,000 principal amount of Bonds for the price of 99.145% of principal amount, with an interest rate of 6⅛%.

*The Commission finds:*

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued April 28, 1967, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

*The Commission orders:*

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D) and (E) of the Commission's order issued April 28, 1967, in the above docket.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-215 (PHASE I)*

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1967)

On January 27, 1967, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-215 (Phase I) an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of an additional 8,000 Mcf of natural gas per day to an existing customer, the Northern States Power Company, all as more fully set forth in the application in this proceeding (Phase I).

Specifically, Applicant proposes to construct in Phase I approximately 10 miles of 30-inch pipeline loop north of the Clifton, Kansas, compressor station. The total estimated cost of these facilities is $1,115,900, which cost will be financed from internal sources such as reserve accruals, retained earnings and cash on hand.

Applicant proposes to initiate delivery of the proposed 8000 Mcf increase in Northern States' contract demand commencing with the 1967-68 heating season. The increased service to Northern States will be in accordance with Applicant's effective FPC Gas Rate Schedules CD-3 and R-3.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits (Phase I), submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943 in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding (Phase I) are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of the subject facilities and

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* The application in this docket is divided into two Phases. This order pertains exclusively to Phase I of said application.

the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver up to an additional 8000 Mcf of natural gas per day to Northern States as hereinbefore described, all as more fully described in the application in this proceeding (Phase I), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by November 1, 1967.

(D) In accordance with the Commission's Regulations, Applicant shall make appropriate rate filings covering the sale authorized in paragraph (A) above.

(E) The authorization granted in paragraph (A) above is without prejudice to Applicant's right to request amendment of the subject order to authorize Phase II facilities.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65–87

### ORDER FURTHER AMENDING ORDER AUTHORIZING EXPORTATION OF NATURAL GAS

(Issued May 16, 1967)

On February 21, 1967, Panhandle Eastern Pipe Line Company (Petitioner) filed in Docket No. CP65–87 a petition to amend the order of the Commission issued in said docket on February 4, 1965, 33 FPC 180, as clarified and modified on April 29, 1965, 33 FPC 903, and amended on December 8, 1966, 36 FPC 999. By the instant filing Petitioner requests that the order issued in the instant proceeding be amended further so as to remove the 50,000 Mcf per day limitation presently contained in Finding Paragraph 2(f) of the aforementioned order of December 8, 1966, in order to conform Petitioner's export authorization to the similar modification recently adopted by the Canadian National Energy Board in the import authorization of Union Gas Company of Canada, Ltd. (Union), all as more fully set forth in the petition to amend.

Petitioner exports gas to Canada under various contracts, the most recent of which is dated August 26, 1966. That contract, and the Commission's order of December 8, 1966, contemplate the export by Petitioner to Union of an additional eight million Mcf on a seasonal basis from September through April. The subject 50,000 Mcf per day limitation is applicable to the August 26, 1966 contract.

Said limitation originated in the contract itself as a volume which could not be exceeded by Petitioner without the consent of Union and accordingly was contained in the Canadian National Energy Board's order of September 29, 1966 and the Commission's order of December 8, 1966.

Petitioner states that, in view of current conditions in Canada, as well as the certainty that it will have in excess of 50,000 Mcf per day available for delivery under the subject contract on certain days during the contract period Union has requested that the daily limitation be removed.

By order issued on February 15, 1967, the Canadian National Energy Board modified its order of September 26, 1966 by striking out the phrase "at a rate not exceeding 50 million cubic feet a day."

To conform its authorization to the Canadian authorization, and to permit the delivery of gas within the seasonal limitation, Petitioner requests the modification of Finding Paragraph 2(f) of the Commission's order of December 8, 1966 so as to delete the phrase "and maximum daily volumes" and the phrase "and 50,000 Mcf, respectively,".

On March 24, 1967, the Commission temporarily amended its order of December 8, 1966 in the subject docket by removing the 50,000 Mcf per day limitation contained in Finding Paragraph (2)(f) thereof.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the Commission's order issued in the instant docket on February 4, 1965, as clarified and modified on April 29, 1965, and amended on December 8, 1966, be amended further as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued in the instant docket on February 4, 1965, as clarified and modified on April 29, 1965, and amended on December 8, 1966, is amended further by deleting from Finding Paragraph 2(f) of said order of December 8, 1966, the phrase "and maximum daily volumes" and the phrase "and 50,000 Mcf, respectively," as hereinbefore set forth and as more fully set forth in the petition to amend filed in this proceeding.

(B) In all other respects the subject order, as amended, shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-125

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1967)

On May 1, 1967, Panhandle Eastern Pipe Line Company (Petitioner) filed in Docket No. CP66-125 a petition to amend the order issued in said docket on April 29, 1966, 35 FPC 651, which order authorized Petitioner to construct and operate facilities necessary for the transportation of gas to Marathon Oil Company (Marathon). By the instant filing, Petitioner requests that the authorized period for construction and operation of the subject facilities be extended for a one-year period in order to permit the reassessment of the authorized project, all as more fully set forth in the petition to amend.

Ordering paragraph (C) of the subject order requires that the facilities be constructed within twelve months of the date of the order. Petitioner has subsequently been informed that Marathon is re-evaluating the project which would require the use of gas in the secondary recovery of oil. No deliveries have been made to Marathon under the subject authorization.

Accordingly, Petitioner requests that the Commission grant a one-year extension of the time permitted for construction of facilities in order to permit Marathon and Petitioner to complete their reassessment of the project.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in the instant docket on April 29, 1966, be amended as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on April 29, 1966, in Docket No. CP66-125 is amended by authorizing an additional twelve months during which the facilities authorized therein are to be constructed and thereby extending the authorized period for construction to April 29, 1968, as hereinbefore described and as more fully set forth in the petition to amend filed in this proceeding.

(B) In all other respects the certificate issued in the subject docket shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## SHENANDOAH GAS COMPANY, DOCKET NO. CP67-272

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1967)

On March 22, 1967, Shenandoah Gas Company (Applicant) filed in Docket No. CP67-272 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction during the twelve-month period following the issuance of certificate authorization herein, and operation of certain natural gas facilities to be used in the transportation and delivery of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant seeks authorization for the construction and operation of taps on its certificated pipeline facilities for the purpose of distributing gas to domestic, commercial and industrial consumers located along the routes of such facilities. No sales will be made through the proposed facilities to consumers located in areas outside the franchise area of Applicant. No sales for resale are proposed.

Deliveries to any one consumer through Applicant's proposed facilities will not exceed 100,000 Mcf of natural gas annually and such gas will not be used for boiler fuel purposes.

The total estimated cost of Applicant's proposed facilities will not exceed $100,000.

By letter dated March 20, 1967, Washington Gas Light Company has agreed to furnish through open account advances, the funds required for construction of Applicant's proposed facilities.

After due notice, no protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on May 11, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Shenandoah Gas Company, a Virginia corporation having its principal place of business in Washington, D.C., is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 30, 1954, in Docket No. G-1448 (15 FPC 593).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(7) and (c)(8) of Section 157.7 and paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization granted hereinafter should be limited to the twelve-month period immediately following the issuance of this certificate and the total expenditures for facilities to be constructed thereunder should be limited to $100,000, and the total deliveries to any one customer not to exceed 100,000 Mcf of natural gas per year.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to construct, during the twelve-month period immediately following the issuance of this certificate, and operate the proposed facilities hereinbefore described to transport and deliver natural gas in interstate commerce, all as more fully described in the application in this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(7) and (c)(8) of

Section 157.7 and paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the twelve-month period immediately following the issuance of this certificate and the total expenditures for facilities to be constructed thereunder are limited to $100,000, and the total deliveries to any one customer not to exceed $100,000 Mcf of natural gas per year.

(D) Direct industrial deliveries of natural gas to interruptible customers pursuant to the authorization contained herein shall be subject to curtailment and interruption if the gas is required to meet the existing or future contract demands of Applicant's customers for firm resale service.

(E) Industrial customers to whom firm deliveries are made pursuant to the authorization contained herein shall not be entitled to any priorities or rights to additional gas for meeting any future increase in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., DOCKET NO. CP67-258

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1967)

On March 9, 1967, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant) filed in Docket No. CP67-258, as supplemented on March 16, 1967, an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and the operation of miscellaneous natural gas purchase facilities necessary to take into its certificated main pipeline system natural gas which will be purchased from producers thereof in the general area of Applicant's existing transmission system, all as more fully set forth in the application, as supplemented, in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

With respect to any offshore facilities which might be constructed under the requested authorization, Applicant has also requested waiver of Section 2.58(a)(2) of the Commission's Rules of Practice and Procedure, which Section provides that no single gas purchase project covered by a "budget-type" authorization shall exceed a cost of $500,000. It appears that the administration of the Natural Gas Act and the public interest does not require waiver of Section 2.58(a)(2); accordingly, Applicant's request for such a waiver should be denied.

The total cost of the proposed facilities is not to exceed a maximum of $2,500,000, with no single project to exceed a cost of $500,000, which cost Applicant proposes to finance from general funds or from revolving credit.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G-910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

(8) Applicant's request for waiver of Section 2.58(a)(2) of the Commission's Rules of Practice and Procedure should be denied.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., to construct during the calendar year 1967 the proposed facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $2,500,000, with no single project to exceed a cost of $500,000.

(E) Applicant's request for waiver of Section 2.58(a)(2) of the Commission's Rules of Practice and Procedure is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP67-269

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 16, 1967)

On March 20, 1967, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP67-269 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas purchase facilities, all as more fully set forth in the application.

Applicant seeks authority for the construction, installation and operation of approximately 3 miles of 10-inch transmission purchase lateral and one purchase meter station and appurtenant equipment to receive natural gas to be purchased from Kerr-McGee Corporation (Kerr-McGee), Cabot Corporation (Cabot), Felmont Oil Corporation (Felmont) and Essex Royalty Corporation (Essex) in Ship Shoal Block 214, located in the Block 208 Field, Offshore Terrebonne Parish, Louisiana. Kerr-McGee, as operator under a contract dated January 19, 1967 between Transco and the above-named producers, will deliver to Transco at a central point in Block 214. Applicant's proposed lateral will extend from a point of connection with Transco's existing Southeast Louisiana Gathering System at platform F of Union Oil Company of California in Ship Shoal Block 208, to the Sellers' platform B in Block 214, where the proposed meter station will be constructed by Transco.

Applicant has entered into a gas purchase contract with Kerr-McGee, Cabot, Felmont and Essex for the sale and delivery to Transco of natural gas produced in Block 214, a part of the Block 208 Field, Ship Shoal Area, Offshore Terrebonne Parish, Louisiana; and is presently taking gas from the Block 208 Field under contract dated October 21, 1964 between Transco and Pan American Petroleum Corporation and Union Oil Company of California. The additional gas reserves in the Block 208 Field, presently estimated at 30,000 Mcf of casinghead gas and 200,000,000 Mcf of gas-well gas (14.73 psia) will become a part of Applicant's over-all system gas supply thereby enhancing its ability to meet the natural gas requirements of its customers.

In connection with this application, reference is made to the requests for temporary certificates filed with the Commission by Kerr-McGee, Cabot, Felmont and Essex in their applications in Docket Nos. CI67-1081, CI67-1060, CI67-1077 and CI67-1076, respectively, in which authorizations are sought to commence sales to Transco from Block 214. Temporary authorizations were issued to the respective producers and Transco on April 20, 1967.

The estimated total cost of construction of Transco's facilities is $558,100 and will initially be financed out of funds made available from company funds, temporary bank loans, and permanent financing to be arranged as part of an over-all financing program.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 11, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits, submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued May 29, 1948, in Docket No. G-704 (7 FPC 24).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities and the transportation of natural gas by Applicant as hereinbefore described and as more fully described in the application, and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be completed and placed in actual operation by August 1, 1967, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## EL PASO NATURAL GAS COMPANY, DOCKET NO. CP67-102

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 17, 1967)

On March 21, 1967, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP67-102 a petition, as supplemented on April 12, 1967, to amend the order issued in said docket on January 4, 1967, 37 FPC 2. By the instant filings Petitioner seeks authorization for the rearrangement and expansion of certain natural gas facilities which were authorized by the subject order and through the use of such facilities to transport and deliver additional quantities of natural gas to the American Smelting and Refining Company (AS&R), an existing direct sale customer, all as more fully set forth in the petition to amend.

The order issued in the subject docket on January 4, 1967, authorized Petitioner, *inter alia*, to construct and operate approximately 17.93 miles of 8⅝-inch O.D. pipeline looping a portion of its San Manuel-Hayden, Arizona, pipeline for the purpose of providing an additional firm daily quantity of 2,023 Mcf of natural gas to AS&R and an additional firm daily quantity of 708 Mcf of natural gas to Kennecott Copper Corporation (Kennecott), both companies being existing direct sale customers of Petitioner.

Petitioner has been advised by AS&R that its future requirements for natural gas have been materially accelerated due to further expansion now required for increased copper production near Hayden, Arizona. Accordingly, Petitioner and AS&R have entered into an amendatory agreement dated March 1, 1967, amending the gas sales contract between the parties dated October 12, 1962, and amended on September 1, 1966, so as to provide for a further increase of 5,057 Mcf in the firm daily deliveries by Petitioner to AS&R.

In accordance with said contract Petitioner seeks authorization to transport and deliver an additional 5,057 Mcf of natural gas per day to AS&R. This additional quantity of natural gas, together with the previously authorized increase of 2,023 Mcf, will provide AS&R with additional daily quantities aggregating 7,080 Mcf. Such additional quantities, representing an increase from 4,046 Mcf per day to 11,126 Mcf per day, will be utilized by AS&R in satisfying its increasing requirements for fuel used in its mining, smelting, metallurgical and related operations conducted near Hayden, Arizona. Said volumes of natural gas will be sold by Petitioner to AS&R at a rate of 30.84 cents per Mcf.

To implement delivery to AS&R of the aggregate additional daily quantity of 7,080 Mcf, Petitioner proposes the construction and operation of facilities in lieu of the presently authorized 17.93 miles of 8⅝-inch O.D. loop pipeline. These substitute facilities consist of approximately 28.1 miles of 8⅝-inch O.D. pipeline extending in a northerly and northeasterly direction from a point of connection with Petitioner's pipeline branches providing service to AS&R and Kennecott near Hayden, Arizona. The substitute facilities will also provide for the presently authorized increase of 708 Mcf of natural gas per day in Kennecott's requirements.

The total estimated direct cost of Petitioner's proposed substitute facilities is $628,000. The total estimated cost for all facilities set forth in the application in this proceeding, as amended, including overhead, contigency and required filing fees, is $779,518, representing a net increase in estimated cost of $309,664.

Petitioner proposes to finance the additional cost of the project through the use of working funds, supplemented as necessary with short-term bank loans.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in the instant docket on January 4, 1967, be amended as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on January 4, 1967, in Docket No. CP67-102 is amended by authorizing Petitioner to construct and operate 28.1 miles of 8⅝-inch O.D. pipeline in lieu of the 17.93 miles of 8⅝-inch O.D. pipeline authorized therein and through the use of said facilities to transport and deliver an additional 5,057 Mcf of natural gas per day to American Smelting and Refining Company, as hereinbefore set forth and as more fully set forth in the petition to amend and supplement thereto filed in this proceeding.

(B) In all other respects the certificate issued in the subject docket shall remain in full force and effect.

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## OPINION NO. 520

## HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-395; MISSISSIPPI VALLEY GAS COMPANY v. HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. RP66-9

### OPINION AND ORDER ISSUING CERTIFICATE AND AMENDING TARIFF

(Issued May 17, 1967)*

*Syllabus*

1. Where all relevant considerations do not militate in favor of one of the competing applicants, it is Commission policy that service to an industrial customer be made by local distributor rather than its pipeline-supplier. P. 923.
2. In resolving public interest question of whether pipeline or its distributor-customer should make direct industrial sale, it is not determinative that industrial customer can get a slightly lower price from distributor; what is determinative is effect of sale on the other customers of pipeline and distributor. P. 923.
3. Utilizing either an incremental or rolled-in method of costing, it is clear that Humble could only supply Mississippi additional gas under its G-1 schedule at a loss. P. 924.
4. Instant circumstance [*supra* 3] alone, is sufficient to require certification of pipeline to serve industrial customer directly. P. 924.
5. Limitations of paragraph 10 of tariff [prohibiting distributor from selling gas purchased under pipeline's Rate Schedule G-1 to any industrial customer in excess of specified monthly amounts] affords pipeline-supplier a

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* Initial decision appears on p. 932. See order issued July 6, 1967 denying rehearing. 38 FPC 41. Affirmed, *Mississippi Valley Gas Co. v. F.P.C.* 398 F. 2d 395 [CA5-1968].

**significant if not decisive advantage over distribution customers in competing for new industrial loads, which is wholly at variance with Commission policy to permit, where consistent with public interest, free and active competition to new markets and growth—moreover, it does not protect pipeline from excessive demands. P. 925.**

**6. Since tariff provision does not give pipeline the protection it is supposed to provide and has potential to thwart public interest, it is unjust and unreasonable within the meaning of Section 5(a) of the Gas Act. P. 925.**

**7. In a proceeding under Sections 7, 4 and 5 of the Natural Gas Act, Commission *issues* certificate of public convenience and necessity authorizing sale and delivery of gas by pipeline to industrial customer; and *requires* pipeline to remove offending clause set forth in paragraph 10 of its tariff and substitute therein reasonable volumetric limitations.**

**Commissioner Ross *dissenting* in part.**

***Carl Illig, Jesse H. Foster, Jr., James K. Schooler, Bernard A. Foster, Jr.* and *Donald B. Robertson* for Humble Gas Transmission Company.**

***John M. Kuykendall, Jr., Richard M. Merriman* and *Peyton G. Bowman, III* for Mississippi Valley Gas Company.**

***Bennet E. Smith* for Mississippi Public Service Commission.**

***Anthony J. Davey* for Diamond National Corporation.**

***Francis J. McShalley* and *Cyril S. Wofsy* for the Staff of the Federal Power Commission.**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

CARVER, *Commissioner:*

Humble Gas Transmission Company (Humble) filed an application pursuant to Section 7 of the Natural Gas Act on June 9, 1965 (amended July 6, 1965) requesting a certificate of public convenience and necessity authorizing it to construct a measuring station and a four-inch pipeline approximately 4,100 feet in length, to maintain and operate approximately 2,350 feet thereof, and to transport, sell and deliver 500,000 Mcf of natural gas annually with a maximum of 3,000 Mcf daily to Diamond National Corporation (Diamond) at its plant near Natchez in Adams County, Mississippi.

Mississippi Valley Gas Company (Mississippi) a local distribution company having the Diamond plant within its service area, intervened in opposition to the Humble application. Mississippi purchases its gas requirements in that area from Humble under an agreement dated September 11, 1963. Mississippi seeks to serve Diamond and contends that Humble should not be certificated to render this service in competition with one of its local distributors.

By order of October 11, 1965, 34 FPC 1127, the Commission issued a temporary certificate to Humble to construct the necessary facilities and to sell gas to Diamond.

In a separate proceeding, on September 2, 1965, Mississippi filed a formal complaint against Humble alleging that one paragraph of Humble's FPC Gas Tariff is unjust, unreasonable and unduly discriminatory or preferential within the meaning of Sections 4 and 5 of the Natural Gas Act. This paragraph provides "Buyer shall not sell gas purchased under seller's rate schedule G–1 to any one industrial consumer in excess of 100,000 cubic feet per month except by written consent of seller" (Paragraph 10,) General Terms and Conditions of Humble's tariff. On September 17, 1965, 34 FPC 873, the Commission issued an order to Humble directing it to show cause why the Commission should not determine that the paragraph is unjust and unreasonable. By order of December 3, 1965, 34 FPC 1415, the Commission granted Mississippi's motion for formal hearing on its complaint and consolidated it with the application by Humble for a certificate of public convenience and necessity to construct and operate the facilities and make the sale to Diamond.

The Presiding Examiner found that Humble should be certificated to make the sale to Diamond and further found that the provisions of the quoted paragraph are just, reasonable, non-preferential, and non-discriminatory and have been applied by Humble in a non-discriminatory manner, and that the complaint filed against Humble by Mississippi should be dismissed and that proceeding terminated.

Staff, Mississippi, and the Public Service Commission of the State of Mississippi take the position that the Examiner was incorrect, that Mississippi, rather than Humble, should make the sale to Diamond and that the quoted paragraph of Humble's tariff should be revised so that Humble may not arbitrarily refuse service to a distributor for a resale to an industrial customer consuming more than 100 Mcf of gas per month.

Mississippi, according to the record, did its best to interest Diamond in locating in the area and worked with the Chamber of Commerce, the City of Natchez, the Mississippi Agricultural and Industrial Board, and representatives of local industries, to that end. Thereafter, when Diamond had decided to locate in the area, Mississippi sought approval from Humble for Mississippi to make a sale to a "new industrial customer," which approval was refused. It does not appear that Humble was informed of the identity of the industrial purchaser, nor that Diamond knew of the requirement that Mississippi obtain Humble's approval before making the sale. A letter (Ex. 33) from Mississippi to Diamond states that its proposed furnishing of the gas would be subject to Mississippi obtaining the necessary supply from Humble. Thereafter Diamond entered into a contract with Humble to purchase the necessary gas for its plant and notified Mississippi that it had arranged to make its purchase elsewhere. The present proceedings followed.

The basic questions before the Commission are: (1) whether Humble should be certificated to construct the facilities and make the sale to Diamond or whether the sale should be made by Mississippi (which needs no certificate); and (2) the propriety of Paragraph 10. We find that the public interest requires the certification of Humble and the invalidation of Paragraph 10.

It is the announced policy of this Commission, where an analysis of all relevant considerations does not militate in favor of one of the competing applicants, that service to an industrial customer be made by the local distributor rather than by its pipeline supplier. *Panhandle Eastern Pipe Line Company*, Opinion No. 510, December 22, 1966, 36 FPC 1107. This policy, however, rather than avoiding an *ad hoc* approach to each comparative proceeding, requires that each case be decided upon its own merits. We agree with the Presiding Examiner that public interest considerations require the certification of Humble.

Mississippi purchases gas from Humble under the latter's G-1 rate schedule at a rate of 17.69 cents per Mcf at 15.025 psia. If permitted to serve Diamond, Mississippi would do so at an average rate of 23.65 cents per Mcf at 14.65 psia, assuming a monthly billing demand of 1000 Mcf and an annual volume of 274,000 Mcf. If the billing demand were 3,000 Mcf per month and the annual volume 500,000 Mcf, Mississippi's price to Diamond would average 25.47 cents per Mcf at 14.65 psia (Tr. 785). Humble proposes to serve Diamond up to 3,000 Mcf per day and 500,000 Mcf per year at the flat rate of 26 cents per Mcf at 15.025 psia, or 25.35 cents per Mcf at 14.65 psia.

The question then is whether the public interest is furthered by requiring Humble to sell to Mississippi at 17.69 cents per Mcf so that Mississippi could resell to Diamond, or by permitting Humble to serve Diamond directly. The comparative cost of facilities is not persuasive. Whether the sale be made by Humble directly or by Mississippi only relatively small amounts need be expended for additional facilities.[1] Nor is it determinative that Diamond can get a slightly lower price from Mississippi. What is determinative is the effect of the sale on the other customers of Humble and Mississippi.

The gas supply for the Humble interstate systems is derived from three sources: Monroe and Vixen Fields and Tensas Gas Gathering Corporation. The Tensas purchase is casinghead gas and supplies a very small percentage of the pipeline's requirements. Since casinghead gas production is geared to the production of oil, there are limitations on its availability. Humble realizes most of its gas supply from its wells in the Monroe Field. But this field, which has been in production since 1916, is now fully developed and its existing daily or annual production cannot be increased. Thus, any additional supply of gas needed by Humble to cover an increase in sales would have to come from the Vixen Field.

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[1] Approximately $7,800 if Mississippi serves Diamond as compared with approximately $21,000 if Humble effects such service.

Relying in the main on the incremental purchase cost of Vixen Field gas, Humble contends that it is not economically feasible for it to supply Mississippi with gas at 17.69 Mcf for resale to Diamond. Staff and Mississippi, while not disputing the factual basis of this presentation, argue however that the incremental cost is irrelevant and that only the system-wide rolled-in costs should be considered. We do not need to decide whether incremental costing is appropriate since we are satisfied that consideration of costs both on an incremental and rolled-in basis requires the same conclusion, that it would not be compensatory for Humble to supply the additional gas to Mississippi at its existing G–1 rate.

The average price paid by Humble for Vixen Field purchases is 18.28 cents per Mcf or .59 cent per Mcf higher than its G–1 rate. Thus, it is apparent that Humble on an incremental basis would be required to absorb a considerable deficit if it were compelled to sell gas to Mississippi for service to Diamond. The evidence on the rolled-in cost is less precise than that as to incremental cost but it is clear that the rolled-in cost to Humble would exceed somewhat its G–1 rate. The rolled-in cost evidence introduced by Humble purports to show an average system cost for the Diamond sale of 23.28 cents per Mcf for 1966, and only nominally less in 1967 and 1968. While this cost appears to be overstated, we are satisfied that, even after allowing for arguable adjustments, Humble's rolled-in cost would exceed its 17.69-cent G–1 rate.[3] Under these circumstances we think it unnecessary to remand for a precise determination of rolled-in costs.

Thus, utilizing either an incremental or rolled-in method of costing, it is clear that Humble could only supply Mississippi additional gas under the G–1 schedule at a loss. This alone, is sufficient to require certification of Humble to serve Diamond directly. It is compelled when consideration is given to the fact that as a result of having to make a noncompensatory sale Humble may have to file for an increase in its G–1 rate to the detriment of the 14 distribution customers, including Mississippi, now taking under that schedule.

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[3] For example, even if we were to permit the parties to attack the 10-cent per Mcf cost of pipeline produced gas in the Monroe Field, which we established in *Olin Gas Transmission Corporation,* 17 FPC 685, as an incentive to Olin, Humble's predecessor, to explore for and develop the additional reserves in North Louisiana necessary to serve its jurisdictional customers, it does not appear that there would be significant impact on Humble's cost of service. Based upon information in the 1965 Form 2 filed by Humble, which we take official notice of, we have calculated that Humble's cost of Monroe Field production is in the range of 7 to 9 cents per Mcf. Even if we readjust Humble's cost of service using a 7 cents per Mcf level for its Monroe Field gas, Humble's resulting cost of service would exceed its G–1 rate.

There remains to be determined whether Humble has established the propriety of Paragraph 10 of the General Terms and Conditions of its general sales tariff. As noted, that provision prohibits a G–1 customer from supplying, to an industrial customer, more than 100,000 cubic feet per month of gas purchased pursuant to that rate without first obtaining the written approval of Humble. The justification asserted for that provision is that it is necessary if Humble is to be protected against the possibility that it will be faced with excessive demands especially in the absence of volumetric limitation on takes. We think, however, that Paragraph 10 cannot be permitted to stand. Limitations such as Paragraph 10 afford a pipeline supplier a significant, if not decisive, advantage over its distribution customers in competing for new industrial loads, an advantage which is wholly at variance with the announced policy of this Commission to permit, wherever consistent with the public interest, free and active competition for new markets and growth. Moreover, they do not accomplish their stated objective of protecting the pipeline from excessive demands. That objective could be realized by an overall volumetric limitation on the amount of gas that any particular purchaser can demand, but not by a restriction such as Paragraph 10. For example, Paragraph 10 does not protect Humble from greater demands made by Mississippi or other customers as a result of an increase in its residential or commercial sales. On the other hand, it would permit Humble to veto an industrial sale by Mississippi even though Mississippi's total demand on Humble might be decreasing. Thus, the tariff provision does not give Humble the protection the provision is supposed to provide, yet it has the potential to thwart the public interest. It is, therefore, unjust and unreasonable within the meaning of Section 5(a) of the Natural Gas Act. Humble may and should substitute a reasonable volumetric limitation. However, we do not adopt Humble's specific suggestion for volumetric limitation based on the maximum day's delivery to the buyer during the 12-month period immediately prior to the effective date of the tariff provisions.[8] This suggestion does not take account of weather variations from year to year, nor does it allow for legitimate growth in demand in the immediate future. Humble's other customers should have the opportunity to comment on the proposed limitations. Accordingly, Humble will be directed to file, within 60 days of the date of this Order, revisions of its tariff with the offending clause removed, and with suitable volumetric limitations included. Any and all customers of Humble, all other persons who might be affected, and the staff may within 20 days thereafter file objections and suggestions as to the proposed volumetric limitations.

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[8] It should be noted that staff's modified proposals to Paragraph 10 suffer from the same defects as Paragraph 10.

We think that oral argument would not add to the presentation of facts and law hitherto made. Accordingly, Mississippi's motion for oral argument is denied.

*The Commission finds:*

(1) Applicant, Humble Gas Transmission Company, a Delaware Corporation with its principal place of business in New Orleans, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in *Humble Gas Transmission Company*, Docket No. CP63-56 (1963), 29 FPC 162, 163, Finding No. (1).

(2) The facilities hereinabove described, all as more fully described in Applicant's application, as amended and supplemented, in the proceeding in Docket No. CP65-395, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation of such facilities together with the transportation and delivery of natural gas by Applicant to the Diamond National Corporation are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities as they have already been constructed and are in operation in accordance with the authority therefor granted by a temporary certificate issued by the Commission on October 11, 1965, and the transportation and delivery of natural gas through such facilities by Applicant to make the industrial sale to Diamond are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations issued under the authority delegated to it under the Natural Gas Act and particularly the general terms and conditions as set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The provisions of Paragraph 10 of the General Terms and

**Conditions of Applicant's tariff are unjust and unreasonable within the meaning of Section 5(a) of the Natural Gas Act.**

*The Commission orders:*

(A) A certificate of public convenience and necessity be and the same hereby is issued authorizing the Applicant, Humble Gas Transmission Company, to construct and operate the proposed facilities and to deliver natural gas as hereinbefore described, all as more fully described in the application and exhibits in the proceeding in Docket No. CP65–395, upon the terms and conditions of this Order.

(B) The certificate issued by Paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Regulations of the Commission under the Natural Gas Act and particularly the general terms and conditions as set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) Applicant shall remove Paragraph 10 of the General Terms and Conditions from its tariff within 60 days of the date of this Order, and shall give notice of the removal to each customer of Applicant to which said paragraph is applicable.

(D) Humble shall file proposed volumetric limitations applicable to each jurisdictional customer within 60 days of the date of this Order, and shall give notice, to each such customer whose agreement to the proposed limitation has not been obtained and to each state regulatory body having jurisdiction in affected areas, of the proposed limitation, the date of filing thereof, and that objections and suggestions as to the proposed limitation may be filed within 20 days of the filing of such limitation.

(E) The motion for oral argument filed in this proceeding by Mississippi Valley Gas Company on October 17, 1966, is denied.

Commissioner Ross *dissenting in part.*

Ross, *Commissioner dissenting in part:*

We have here the situation of a local distributor, Mississippi Valley Gas Company, which exerted substantial effort in working with local bodies to induce the location of a new industrial plant in its service-area. Ultimately, this effort was successful and Diamond located its new plant only 1200 feet from one of Mississippi's existing laterals. However, Humble Gas Transmission, which is Mississippi Valley's sole source of supply, refused under Article 10 of its tariff to sell the necessary gas to Mississippi for the purpose of supplying Diamond. Instead, Humble itself seeks to make the sale. The record indicates that Humble's rate base is rapidly approaching zero and the contention is made, not unreasonably, that Humble is attempting in every way possible to maximize its more profitable nonjurisdictional business in lieu of making jurisdictional sales to its distributors.

Consolidated in this proceeding is Mississippi's complaint, which challenges the legality of the tariff provision, *i.e.*, Article 10, under which Humble refused to sell to Mississippi for resale to Diamond. While the majority holds Article 10 unjust and unreasonable under Section 5 of the Natural Gas Act,[1] it, in fact, erects a more formidable barrier precluding Mississippi, or any other distributor, from purchasing additional quantities of gas from Humble. The majority achieves this unhappy result by finding, without reservation, that Humble cannot economically make jurisdictional sales of gas under its applicable G-1 tariff. If forced to do so, the majority states that Humble would suffer a loss of 5½¢ on each Mcf sold and therefore should not be required to sell to Mississippi. The majority has thus armed Humble with an impregnable club to beat down the efforts of any of its distributors against raids in their service area by Humble. Mississippi Valley will certainly be surprised to discover that Article 10 was stricken only to be replaced by a more restrictive device. While the majority seems to be leery of doing anything which might precipitate a rate increase filing by Humble, it should recognize that the existence of a low rate is hardly a benefit if no distributor can purchase additional quantities of gas under it.

In my opinion, the majority's approach is erroneous.

When the legality of Georgia Power's load limitation was challenged, Georgia argued that the effect of removing it would necessitate a rate increase of the magnitude of $800,000 annually. The Commission had no difficulty with this contention. It simply said such an argument was irrelevant.[2] On rehearing, the Commission emphasized this conclusion in Opinion No. 487-A, issued May 26, 1966, 35 FPC 818:

> This is not a proceeding to determine just and reasonable rates, and involves the question of whether two provisions in the WR-4 rate schedules of Georgia Power, applicable to wholesale sales to municipally-owned distributors for resale, are unjust, unreasonable and unduly discriminatory and therefore unlawful under Sections 205 and 206 of the Federal Power Act. In considering the relationship between the deleted provisions and the existing rate schedule, we made it clear in our March 30 Order that our refusal to expand this proceeding into a rate case in no way precluded Georgia Power from submitting for filing new rate schedules reflecting increased rates, in accord-

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[1] The Commission unanimously and explicitly held tariff provisions essentially similar to Article 10, to contravene Sections 205 and 206 of the Federal Power Act, *i.e.*, the counterparts of Sections 4 and 5 of the Gas Act. This action was taken in *Georgia Power Co.*, Docket No. E-7099, *et al.*, Opinion No. 487, March 30, 1966, 35 FPC 436, a citation conspicuous by its absence in the majority opinion.

[2] "Georgia Power's $800,000 revenue loss figure is irrevelant, for possible revenue loss on other sales cannot justify the retention of a discriminatory provision in a rate schedule." Opinion No. 487, *supra*, p. 438.

ance with Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder. Georgia Power may avail itself of this opportunity at any time, separate from this proceeding, where its contractual commitments permit such a filing.

In the light of this decision, Humble's decision to stipulate that its G–1 rate was compensatory at the prehearing conference in this case was reasonable.[3] The same is also true respecting the Examiner's steadfast refusal to receive evidence regarding the cost of Humble's produced gas. Since this was not an overall rate case, there was no occasion to go behind just and reasonable rate determinations. Certainly, there is no more justification for going behind the propriety of the 10¢ allowance for Humble's own gas than there is for going behind Humble's resale rate of 17.69¢.

During rebuttal, Humble apparently had second thoughts about its stipulation and introduced cost evidence.[4] This evidence purports to demonstrate that Humble's rolled-in cost of service exceeds its G–1 rate by over 5½ cents per Mcf.

This evidence is far from convincing. First, it is difficult for me to conceive that the Humble management has so little regard for its stockholders that it loses 5½ cents on every Mcf that it sells when it has a convenient remedy of filing for a rate increase. Second, not only has Humble failed to seek an increase, but twice, in 1964 and 1965, it voluntarily filed rate *reductions* in its jurisdictional rates resulting in the present 17.69¢ per Mcf. Third, Humble's cost evidence, introduced for the first time on rebuttal, was challenged in only three limited respects during the hearing. Whether or not it would stand up under careful scrutiny in the crucible of a rate case is far from clear.

The majority not only accepts Humble's evidence at face value but attempts to bolster a critical weakness regarding the cost of Humble's own production. As noted above, the difficulty here was that the Examiner consistently refused to allow any evidence on this issue. Rather than simply remanding the case for a limited hearing on this issue, the majority attempts to fabricate a cost to compensate for this void in the evidence. I haven't the slightest idea whether its computation is accurate, and the majority is precluding any careful analysis in its terse "explanation" in footnote 2.

If the majority had been as eager to consider Humble's other costs it would have discovered, as staff contends, that Humble's

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[3] "What we are saying here, * * * by this stipulation we would not contend that if the test is as the staff argued a systemwide test, and that is the only way to look at it, and we would have to show we couldn't make the sale on an economic basis to Mississippi, if these things are so, then we will not urge and we will not contend that on that systemwide basis the 17.69 is not a compensatory rate." Tr. 113.

[4] Staff's attempts to meet this evidence were rather severely rejected.

Fowler-Baton Rouge system will be fully depreciated in 1968.[5] Obviously Humble's costs will be drastically lower than the 23.28¢ per Mcf figure used by the majority. Yet the majority completely ignores this fact and predicts grave consequences to all of Humble's customers if Humble's application is denied. Specifically, the majority finds that its conclusion is "compelled when consideration is given to the fact that as a result of having to make a noncompensatory sale Humble may have to file for an increase in its G-1 rate to the detriment of the 14 distribution customers, including Mississippi, now taking under that schedule." In finding grave consequences from the mere "filing" of the rate increase, the majority apparently believes that Humble could justify any rate increase it files. Of course, in view of its rate base situation, the possibilities of such justification—or even of a filing—are exceedingly slim.

The majority also finds that Humble's incremental cost of selling to Mississippi exceeds its G-1 rate. The majority's computation of incremental cost is erroneous and inconsistent with the long-established policy of the Commission on this issue. The Commission uses the following test for determining whether a new sale would be economically feasible: measure the estimated revenues with the cost of additional facilities required, the *average* gas cost, and other variable costs (*e.g.*, compressor fuel). The Commission enunciated this principle, and its rationale, in a unanimous opinion rejecting an intervener's claim that incremental gas costs should be utilized:

> However, it is clear that Northern's use of average system purchased gas costs in its incremental cost study was proper. An incremental cost study in a pipeline certificate case normally includes the specific costs directly associated with the particular service proposed, and not general, system-wide costs, except that average gas purchased costs[6] are normally used since the system gas supply is considered available to all customers throughout the system and no particular reserves are deemed earmarked for any particular service.[7]

Far from being unique, this is the test the Commission uses in every pipeline certificate matter, including the half-dozen or so noncontested applications decided weekly, and undoubtedly will be used in the future, except for this case.

How does the majority explain its deviation? What is the rationale for assigning certain reserves to specific customers? Is there a more desirable public purpose to be served by ignoring its normal policy in this case? No answers are given, and we are left to wonder whether the majority, in fact, favors direct sales by pipelines despite its mere language to the contrary.

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[5] Exhibit 29, Schedule 5, Column (d), line 11.

[6] Of course, average system gas cost includes a pipeline's own production. *Panhandle Eastern Pipe Line Co.,* Opinion No. 510, Docket No. CP66-50, December 23, 1966, 36 FPC 1107.

[7] *Northern Natural Gas Co.,* Opinion No. 463, 33 FPC 1163, 1166 (1965).

Humble itself introduced evidence showing its average system cost reflecting a 10¢ per Mcf allowance for its own produced gas. This evidence, which was uncontested, reflected a cost of 13.45¢ per Mcf for its gas supply. Apparently Humble has sufficient existing capacity to deliver volumes for the Diamond sale since its incremental cost showing, other than gas cost, included only those costs associated with the construction of a lateral to the Diamond plant. Accordingly, under the Commission's historic method, Humble's sale of additional gas to Mississippi for resale to Diamond is economically feasible. This conclusion is consistent with Humble's stipulation that it could economically make additional sales to Mississippi under its filed tariff. (See footnote 3, *supra*)

Viewed in its proper perspective, this is a simple case of a pipeline raiding the service area of a distributor where the interested local regulatory body, the Mississippi Public Service Commission, strongly supports the application of the local distributor. As that Commission stated in its brief on exceptions:

> It was and remains the Mississippi Commission's position that if the local distributor is ready, willing and able to make an initial sale in its certificated area, it and not its interstate pipeline supplier should do so. Quite obviously, both Humble and Mississippi Valley desire to serve the industrial plant of Diamond Natural Corporation because either would receive a substantial benefit if permitted to make the sale. It is our position that Mississippi Valley should make the sale because any benefits received by it ultimately will have a beneficial result on the individual domestic consumer served by Mississippi Valley.

Time and time again, the Commission has emphasized that service by the local distributor is preferred, except in unusual circumstances. The Commission has favored this wise policy not only in the large cases, like *Gulf Pacific*,[8] but in proceedings of a lesser magnitude, such as *Fulton*, *supra*. There are no unusual circumstances here. To the contrary, as the majority finds, Mississippi would make the sale at a lesser rate to Diamond than would Humble. Moreover, while the additional facilities required by either applicant are not substantial, the capital cost to Mississippi for making the sale would be about 1/3 of the cost Humble would incur. Were it not for Article 10 of Humble's tariff, there is no question but that Mississippi and its customers would be reaping the benefits of its successful efforts in locating new business in its service area. In short, Mississippi would be serving Diamond. Since the majority has found that Article 10 is inconsistent with the Natural Gas Act, it is ironic that it nevertheless sanctions Humble's piracy initially justified on the sole basis of that tariff provision.

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[8] *Transwestern Pipeline Co.*, Opinion No. 500, issued July 26, 1966, Docket No. CP63-204, 36 FPC 176.

For these reasons, I would deny Humble's application for authority to make the proposed sale to Diamond and permit Mississippi Valley, the local distributor, to make the sale.

## INITIAL DECISION

## OF THE PRESIDING EXAMINER UPON AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND UPON THE JUSTNESS AND REASONABLENESS OF PARAGRAPH 10 OF THE GENERAL TERMS AND CONDITIONS OF HUMBLE'S FPC GAS TARIFF, ORIGINAL VOLUME NO. 1

(Issued September 15, 1966)

FRAZEE, *Presiding Examiner:* The Humble Gas Transmission Company (Humble)[1] filed an application, pursuant to Section 7 of the Natural Gas Act on June 9, 1965, as amended on July 6, 1965, requesting a certificate of public convenience and necessity authorizing it to construct a measuring station and a 4-inch pipeline approximately 4,100 feet in length, to maintain and operate approximately 2,350 feet thereof, and to transport, sell and deliver 500,000 Mcf of natural gas annually with a maximum of 3,000 Mcf on a daily basis to the Diamond National Corporation (Diamond). (Docket No. CP65-395). The proposed lateral line is to extend from a point of connection with Humble's existing Fowler-Baton Rouge pipeline facilities[2] to Diamond's industrial plant near the city of Natchez in Adams County, Mississippi.

Upon completion of the construction, Humble proposes to assign title to Diamond, free of cost, that part of the lateral line which extends from the discharge side of the measuring station to the terminal end of the lateral line at Diamond's plant. Humble estimated the proposed facilities would cost $21,000. The 1,750 feet of line to be assigned to Diamond represents about $8,400 of the estimated total cost of the proposed facilities.

Humble would use the proposed facilities to make a direct industrial sale of natural gas to Diamond who will use the gas as boiler fuel to produce steam for processing, for direct-fired driers, and miscellaneous plant uses in a moulded pulp products manufacturing facility under construction near Natchez.

Mississippi Valley Gas Company (Mississippi) filed a petition to intervene on July 12, 1965, opposing the Humble application. Mississippi is a local distribution company[3] selling natural gas in numerous communities, including Natchez, in the State of Mississippi. The Diamond plant, located near Natchez, is within the service area assigned to Mississippi by the Mississippi Public Service Commission. Mississippi purchases its Natchez area natural gas requirements[4] from Humble under a service agreement dated September 11, 1963.

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[1] Humble is a Delaware Corporation, authorized to do business in the State of Mississippi. Exhibits 1 and 2. It is a natural-gas company under the provisions of the Natural Gas Act. *Interstate Natural Gas Co.*, 3 FPC 416, *affirmed* 331 U.S. 682; Olin Gas Transmission Corp., succeeded to the interests of Interstate Natural Gas Co., and Humble succeeded to the interests of Olin Gas Transmission Co.

[2] Humble owns and operates three separate pipeline systems, only one is jurisdictional. It is commonly referred to in this record as the Fowler-Baton Rouge System. Exhibits 4 and 13. It is separately operated and unconnected with the two intrastate systems. Tr. 435; also see *Olin Gas Transmission Corp.*, 17 FPC 685, 687.

[3] Mississippi's rates, services and facilities are regulated by the Mississippi Public Service Commission.

On August 18, 1965, Humble filed an application for a temporary certificate of public convenience and necessity under the provisions of Section 157.17 of the Commission's Regulations under the Natural Gas Act to construct the facilities, described in its application therefor filed on June 9, 1965, in order to commence the sale to Diamond. By an order issued on October 11, 1965, 34 FPC 1127, the Commission determined that an emergency as contemplated by Section 157.17 of its Regulations under the Natural Gas Act had been shown to exist, whereupon it issued a temporary certificate to construct the facilities and make the sale to Diamond.

On September 2, 1965, Mississippi filed a formal complaint against Humble alleging Paragraph 10 of the General Terms and Conditions of Humble's FPC Gas Tariff, Original Volume No. 1,[5] to be unjust, unreasonable, unduly discriminatory or preferential within the meaning of Sections 4 and 5 of the Natural Gas Act. (Docket No. RP66-9). Mississippi requested a hearing on its complaint and moved to consolidate such hearing with the hearing on Humble's application for a certificate and the order to show cause.

On September 17, 1965, 34 FPC 873, the Commission issued an order to Humble directing it to show cause why the Commission should not find and determine that Paragraph 10 of the General Terms and Conditions of Humble's FPC Gas Tariff, Original Volume No. 1, quoted in fn. 5, is unjust and unreasonable.

Humble filed its answer to Mississippi's complaint and motion on October 1, 1965. By an order issued on December 3, 1965, the Commission granted Mississippi's motion for a formal hearing on its complaint and consolidated it with the application by Humble for a certificate of public convenience and necessity to construct and operate the facilities requested.

Following prehearing conferences, the matter came on for formal hearing which was concluded on May 6, 1966.

The first of the two principal issues to be considered in this proceeding is whether a permanent certificate of public convenience and necessity should be issued to Humble, to supersede the temporary certificate issued to it on August 11, 1965, to construct the facilities and to commence the transportation, delivery and sale of natural gas to Diamond.

The second principal issue relates to the propriety of Paragraph 10 of Humble's FPC Gas Tariff, which is discussed hereinafter at *infra*, pages 939, 940.

Mississippi is one of 14 purchasing-distributors receiving natural gas service from the Fowler-Baton Rouge System under Rate Schedule G-1 of the Humble Tariff.[6] The rate for service under the G-1 rate schedule is 17.69 cents per Mcf.[7]

Officials of Mississippi and others interested in attracting new industries to the State of Mississippi generally, and the Natchez area specifically, learned that Diamond was interested in a new plant location in a southern state and that a location near Natchez was being considered. (Tr. 601). The officials of Mississippi, and others interested, contacted Diamond. Several promotional meetings were held with Diamond officials. A Diamond witness testified that Diamond investigated several prospective plant sites, analyzing each for the availability of raw materials, transportation, labor, taxes and local government concessions, and the availability of natural gas for use as plant fuel. Diamond made its decision in the summer of 1963 to locate its new plant just outside the city limits of Natchez. (Tr. 190).

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[4] Gas requirements for service to other communities by Mississippi are purchased from four other pipelines.

[5] Paragraph 10 of the General Terms and Conditions of Humble's FPC Gas Tariff, Original Volume No. 1, contains the following provision:

"Buyer shall not sell gas purchased under Seller's Rate Schedule G-1 to any one industrial consumer in excess of 100,000 cubic feet per month except by written consent of Seller."

[6] See Item D, Second Revised Sheet No. 28; Tr. 303-4.

[7] See Item D, Second Revised Sheet No. 5: Exh. 44.

While the negotiations for the location of the plant in Natchez were going on, Mississippi indicated its desire to sell Diamond its natural gas requirements for its Natchez plant. On September 10, 1963, Mississippi submitted a proposal[8] to Diamond and asked for a reply letter of intent regarding the purchase of gas. This, Mississippi said, would enable it to make the necessary arrangements to obtain the gas for Diamond. (Exh. 33, Tr. 604). A follow-up letter went to Diamond on September 24, 1963 (Exh. 34, Tr. 605) to which Diamond replied on September 27, 1963, that its planning was not yet far enough advanced to make any commitments for the purchase of a gas supply. (Tr. 190).

Anticipating the sale to Diamond, there were oral discussions between Mississippi and Humble. On June 18, 1963, Mississippi submitted a formal written request to Humble, as provided by Paragraph 10 of Humble's tariff, asking its consent to attach a large potential industrial customer. (Exh. 46). Humble formally denied Mississippi's request by letter dated June 21, 1963. (Exh. 47).

Douglas J. Miles, who is Vice President, Secretary, Manager of Gas Sales and Supply, and a member of the Board of Directors of Humble (Tr. 236), testified that at the time Humble refused its consent to Mississippi to serve a potential industrial customer (Exh. 46) it was not aware of the identity of the customer and that the refusal of consent was "because it would not be economically feasible for Humble Gas to purchase, transport, sell, and deliver the increased quantities estimated for the large industrial consumer" (Tr. 249) under its G–1 rate schedule price of 17.69 cents per Mcf.

Diamond, a knowledgeable and experienced purchaser of natural gas for industrial use, says it carefully considered the proposals of the only two natural gas suppliers in the area, Mississippi and Humble, and concluded the proposal made by Humble was best suited to its requirements, therefore the sale was awarded to Humble and a contract executed on March 31, 1965 (Exh. 12, Tr. 191). Diamond's witness stated it had no knowledge, at that time, of Humble's refusal to sell the Diamond gas to Mississippi. Diamond notified Mississippi by letter on April 20, 1965, of the contract with Humble (Exh. 35, Tr. 605).

It was the further testimony of the witness Miles that one of Humble's sources of gas supply comes from company-owned production in the Monroe Field[9] in Louisiana. The gas supply situation in the Monroe Field was last considered by this Commission in *Olin Gas Transmission Corp.*, Opinion issued May 15, 1957, 17 FPC 685. (Humble has since succeeded to the Olin interests.) This was a Section 4 rate case based upon a twelve months test period ending October 31, 1954. At p. 700 in the *Olin* opinion, the Commission said:

> No new reserves of any consequence have been added to the field for many years, and available reserves and production are slowly declining. In 1950, total Monroe Field production was 148,592,804 Mcf of natural gas; in 1951, 143,933,172 Mcf; in 1952, 129,785,345 Mcf; in 1953, 114,671,576 Mcf; and in 1954, 107,086,285 Mcf. Further production declines are forecast, and unless additional reserves are found in or near the field area,

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[8] There were no negotiations as to the price, Mississippi merely submitted its Rate Schedule No. 87.

[9] The Monroe Field was discovered in 1916.

> the Monroe Field is expected to be commercially exhausted by the end of 1963.

Then the Commission continued by saying in the following paragraph:

> Olin is the largest individual producer in the field. It has about 50,000 acres of the field's some 250,000 productive acres and 358 of its 1,868 producing wells. There is no question but that in a few years' time, Olin will be unable to meet its customers' requirements with gas produced by it from the Monroe Field. Without some incentive to produce additional gas for its resale customers, Olin will be required to purchase the needed gas at higher prices from others which will directly result in increased costs to the consumers of gas. * * *

Since the date of the *Olin* Opinion, *supra*, Humble's evidence shows it has conducted an active program of reworking wells and drilling new ones in order to maintain maximum production from its Monroe Field acreage (Exh. 28, Tr. 249,451–53). The Humble witness testified that, through its program, since 1957 the number of company-owned wells have increased from 394 at the end of 1957, to 544 at the end of 1964, an increase of 150 wells. This witness estimated Humble's production from its own wells in the Monroe Field for the year 1966 would approximate 26.9 billion cubic feet of gas. While Humble plans to continue an active drilling program to enable it to maintain deliveries from the Monroe Field, the witness said "There has been a steady decline and there will continue to be a steady decline" in gas supplies and deliveries from the Monroe Field. (Tr. 249). Another Humble witness, W. Ray Booth, who is Manager-Operations, whose responsibilities include, among others, all operational matters related to Humble's gas production, transmission, compression, gas measurements and dispatching (Tr. 447) testified that since April 1963, all of the Humble owned wells in the Monroe Field have been produced to their maximum physical capabilities (Exh. 28; Tr. 452). They are operated "wide open" (Tr. 470).

Humble purchases all gas available from the Tensas Gas Gathering Corporation.[10] This gas is delivered into the Fowler-Baton Rouge System through a Tensas lateral at a point about 67.31 miles south of the Humble De Siard Compressor Station in the Monroe Field (Exh. 13; Tr. 453) and in 1966 is estimated to comprise about 3 percent of Humble's supply.

Humble's only other source of gas supply for its Fowler-Baton Rouge System comes from the Vixen Field,[11] located in Caldwell Parish, Louisiana. This gas is delivered into the System at a point approximately 21.21 miles south of Humble's De Siard Compressor Station in the Monroe Field (Exh. 13; Tr. 448).

Humble's evidence (Exh. 13) shows the actual flow conditions and the sources of supply on the Fowler-Baton Rouge System for the maximum day deliveries during the calendar year 1964—the latest year for which complete data are available. The peak day occurred on February 21, 1964. The gas available on that date from the various sources of supply was:

83, 459 Mcf— 69. 7 percent—Monroe Field.
30, 433 Mcf— 25. 4 percent—Vixen Field.
5, 808 Mcf— 4. 9 percent—Tensas.

119, 700 Mcf—100. 0 percent (Exh. 13; Tr. 449)

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[10] This is composed principally of oil-well gas (Tr. 453).

[11] Purchases here are made from the Atlantic Refining Company (now Atlantic Richfield) and the Shell Oil Company, the principal supplier being Shell. Items C, F and G; Tr. 250).

The witness Miles testified that for the year 1966, Humble's supply of gas for its Fowler-Baton Rouge System would come from the following sources:

18, 966, 000 Mcf [12]— 58 percent—Monroe Field.
12, 601, 000 Mcf [13]— 39 percent—Vixen Field.
1, 117, 000 Mcf — 3 percent—Tensas.

32, 684, 000 Mcf —100 percent (Tr. 272)

There is no question, from the evidence adduced by Humble on this record, that its supply of company produced gas from the Monroe Field is declining annually despite Humble's efforts to increase its production. Also that Humble's supply from Tensas is decreasing. Therefore, as Humble's evidence clearly shows, it must depend on its "swing" gas, and additional supplies, from the Vixen Field or from other sources of supply not yet contracted for and in all probability at increased costs. (Tr. 254, 345).

Mississippi knew, when it made its formal request to Humble for 340,000 Mcf of gas per year to serve a new potential industrial customer in the Natchez area, that Humble had a problem in obtaining the gas supply at a price that would enable it to sell to Mississippi for resale under Humble's present FPC Gas Tariff (Rate Schedule G–1). (Exh. 46, p. 2, reference May 31, 1963 discussion between Mississippi and Humble officials).

Humble's evidence shows it was necessary for it to refuse to supply the gas requested by Mississippi (Exh. 47) for the reason that the only place it could procure additional gas would be from the Vixen Field, where the average price to Humble is 18.28 cents per Mcf (Tr. 250); that it would not be economically feasible for Humble to pay 18.28 cents per Mcf of gas, plus the costs of transportation and delivery to Natchez, and there sell it to Mississippi for 17.69 cents per Mcf. (Tr. 250).

Since issuance of a temporary certificate to Humble to make a direct sale to Diamond, Humble's evidence shows that with the addition of the Diamond load its supply of, and demand, for, natural gas on its Fowler-Baton Rouge System are in balance (Tr. 423).

Humble has established on this record and the Commission found in the *Olin* case, *supra*, that its available supply of gas from the Monroe Field is in a steady decline.

Humble has also established that its only remaining source of new gas supply is from the Vixen Field, where the average cost to Humble is 18.28 cents per Mcf.

Humble has, therefore, shown by a preponderance of the evidence its increasing reliance on the Vixen Field for its present and future supply of natural gas to meet the requirements of its customers, resale and direct, on its Fowler-Baton Rouge System.

With this cost and supply picture in mind, Humble appears from this record to have had no other recourse except to deny the Mississippi request if it were to avoid a loss sale. On its face a sale to Mississippi at 17.69 cents while paying on the average 18.28 cents (incremental price basis) for Vixen Field gas would produce a .59 cent loss for each Mcf sold. The same incremental price of 18.28 cents related to the direct sale to Diamond at 26.00 cents would produce a 7.72 cents per Mcf gross profit to Humble, which profit would actually be several cents less, if transportation and loading costs were added to the incremental price.

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[12] This volume does not include field sales of 7,298,000 Mcf nor company use gas of 712,000 Mcf for a total of 8,010,000 Mcf. (Exh. 7, Sch. 2, Lns. 34 and 39; Exh. 18, Col. 4, Lns. 5 and 7.)

[13] This volume includes 500,000 Mcf for the Diamond load. (Exh. 18).

Staff contends, at p. 21 of its brief, that Humble's claimed average system cost of 23.28 cents per Mcf (Exh. 22) to Mississippi is not a true cost figure representative of Humble's cost of service, as it does not reflect the low actual cost of Humble's own production in the Monroe Field. Exhibit 22 indicates that the Monroe Field gas is priced into the cost of service at the 10-cent price[14] along with purchase gas costs ranging from 4.91 cents[15] to 18.28 cents. The average system cost of the Diamond sale developed from this cost of service by Humble is 23.28 cents for the year 1966 and for the years 1967 and 1968 it indicates an average cost of 22.72 and 22.79 cents, respectively. While this average cost appears to be somewhat on the high side,[16] it is doubtful that a cost of service determination utilizing the actual cost of gas from the Monroe Field (alleged by the Staff to be in the area of 2.64 cents[17] and 4.91 cents[18] per Mcf (Staff brief, p. 24)) would produce an average system price below 18.28 cents per Mcf—the average incremental price of gas from the Vixen Field.

The Staff strongly contends it should be permitted to introduce evidence of cost on Humble's Monroe Field production in the instant case,[19] to demonstrate that by conforming to a just and reasonable price standard, as utilized in rate cases, a profitable sale could be made by Humble to Mississippi. The Examiner has, in this instance, denied the cost evidence of the Staff on the grounds that this was not the proper forum in which to consider a Humble rate case; that a just and reasonable price for Humble's Monroe Field production has heretofore been determined in the *Olin* case, *supra*, and further, that the just and reasonable standard is not applicable to a Section 7 application.

The Staff also contends Humble's direct assignment of the Vixen Field costs to the Diamond sale is contrary to the Commission's established allocation principle that the cost of gas from specific sources is not assignable to specific customers. The Staff relies upon *United Gas Pipe Line Company*, 14 FPC 353, 393 and *Battle Creek Gas Company* v. *F.P.C.*, 281 F. 2d 42. While this latter case supports the Staff position, it also supports the assignment of incremental costs to a particular project, for at page 47 the Court said that, "At some point in every gas distribution facility the general system ends and connective links to the local distributors' own equipment begins. At this point the facility becomes so identified with its function as a part of the local distributor's gas plant that it may be unfair to charge its costs to all of the customers of the utility. * * * In such a situation the costs of these facilities are commonly charged as an 'incremental' cost added in to the particular customer's rate base." (Citing *Montana Power Company,* 11 FPC 1). Here, under Humble's contract with Diamond, all of the incremental costs will be recovered exclusively from Diamond and will not be borne by Humble's other customers. This certainly is in the public interest.

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[14] This was the price arrived at by the Commission in a full scale rate case under Section 4 of the Natural Gas Act, *Olin Gas Transmission Corp.*, 17 FPC 685. The 10 cents per Mcf price for Humble's company-owned production in the Monroe Field, and used by it in its Fowler-Baton Rouge System for resale to its customers thereon, was found to be just and reasonable in 1957 and there has been no rate hearing since that time.

[15] Humble's Exh. 22, Sch. 4, ln. 2, estimates that in 1966 it will purchase 61,000 Mcf of gas in the Monroe Field at an average cost of 4.91 cents per Mcf. However, this volume is only 0.15 percent of the total gas supply estimated to be available to Humble from all sources during 1966.

[16] However, see the Commission discussion at p. 700 of the *Olin* case, *supra*, in regard to the necessity for Humble to purchase from others its needed gas requirements. There, a purchase from United Gas Pipe Line Company was used as an illustration and the Commission said that "On the basis of Olin's actual load factor for the year 1954, the cost would be 23.34 cents per Mcf."

[17] This 2.64 cents per Mcf, referred to in the Staff brief at p. 24, ln. 5, is not a part of the record herein. This was the alleged cost of producing Monroe Field gas used by the Staff in the *Olin* rate case, *supra*.

[18] See fn. 15, *supra*.

[19] The Staff's opposition to the use of the 10-cent per Mcf price for Humble's Monroe Field production is an attack in a Section 7 hearing of a rate previously found to be just and reasonable in a formal Section 4 rate case, *Olin, supra*.

Returning to Humble's present and future supply picture, it can be seen that more and more gas must necessarily be taken from Vixen Field; this will inevitably increase Humble's over-all gas supply cost and will consequently make less profitable in the future Humble's G–1 rate of 17.69 cents per Mcf to its 14 distributor customers.

To summarize, on an incremental basis, gas for the Diamond sale is only available to Humble at a cost of 18.28 cents per Mcf whether the sale to Diamond through Mississippi or directly by Humble. On Humble's system-wide basis, the fully allocated cost of service for the Diamond sale would be 23.28 cents per Mcf. Under either cost computation it is evident the Diamond sale at Humble's presently effective G–1 rate of 17.69 cents per Mcf would be a loss sale and uneconomic for Humble.

Humble's Vice President, Douglas J. Miles, testified that a possible solution, whereby Humble could make the sale of the Diamond requirement to Mississippi, would be for Humble to file for a rate increase. Such a solution, he testified, would not be in the public interest because a rate increase to a level which would make the sale economic would have a substantial cost impact on all 14 G–1 customers, including Mississippi. He said total deliveries to all G–1 customers in 1964 amounted to 10,618,284 Mcf, of this 1,829,151 Mcf, or 17.2 percent, went to Mississippi. Thus, he said, under a general rate increase which would make the Diamond sale economically possible, Mississippi would bear only 17.2 percent of the burden of the rate increase while, to create this benefit for Mississippi, the other G–1 customers would bear the other 82.8 percent of the increase. The witness concluded it was in the public interest to avoid such a rate increase as long as possible (Tr. 253). There can be no argument on this score if the Commission is to follow the mandate of the Natural Gas Act to protect the ultimate consumers of natural gas from higher charges.

The Chairman of the Mississippi Public Service Commission, Norman A. Johnson, Jr., appeared as a witness and testified that his Commission has issued certificates to Mississippi which assign and define the service area in and about Natchez (Exhs. 23, 24, 25 and 26); that Mississippi Public Service Commission has exclusive original jurisdiction over the intrastate business and property of Mississippi; however, he also testified that his Commission would have no jurisdiction over a direct industrial sale made by an interstate pipeline such as the proposed sale by Humble to Diamond. In support of this statement he cited two decisions of the Supreme Court of Mississippi, *United Gas Pipe Line Co.* v. *Miss. P.S.C.,* 1961, 133 So. 2d 521, 241 Miss. 762, 41 PUR 3d 145 and *Texas Gas Transmission Corp.* v. *Miss. P.S.C.,* 1961, 133 So. 2d 526, 241 Miss. 826, 41 PUR 3d 207 (Tr. 386). However, he opposed the issuance of a certificate to Humble to make a direct sale to Diamond on the grounds that neither the Mississippi Public Service Commission, nor the Federal Power Commission would have regulatory control over the sale under the provisions of the Natural Gas Act.

Mississippi opposes the issuance of a certificate to Humble to make the direct sale to Diamond (1) because the Diamond plant is located in its service area as certificated to it by the Mississippi Public Service Commission and (2) because Mississippi was instrumental in persuading Diamond to locate its plant in Natchez. (Mississippi Br. p. 2). Citing several Commission decisions, but relying heavily upon *Southern Natural Gas Company* (1961), 25 FPC 925, and *Northern Natural Gas Company* (1965), 33 FPC 501, (Mississippi Br. pp. 21–26) Mississippi argues "* * * the Commission has established a specific and easily defined policy" that "If the local distributor is ready, willing and able to make the sale then it, not the pipeline, should perform the service." Mississippi concludes by stating it is "ready, willing and, but for Humble's discriminatory refusal * * *" to deliver the requested volumes of gas it would be "* * * able to make the sale" to Diamond. (Mississippi Br. p. 26).

In the *Southern Natural* opinion, *supra*, the Commission held, ***absent unusual circumstances*** [italic supplied] a certificate should be issued to the distributor to make the industrial sale. The Commission concluded by saying (p. 927) "* * * he (the Examiner) has not declared, nor do we declare, that the distributor in all cases, rather than the interstate pipeline, should be permitted to make proposed industrial sales. We shall continue to consider each case on its merits as it arises and make the determinations which are commensurate with the facts and the law applicable thereto." This position was reiterated and followed in the *Northern Natural* opinion, *supra*, at p. 503, where the Commission said "* * * The Commission in *Southern Natural* expressly refrained from establishing a policy that industrial sales should always be made by a distributor. Rather, we concluded there that each such case should be resolved on its individual merits." A certificate was issued to Northern Natural to make the sale.

Applying the Commission policy of considering each case on its merits as the case arises, it is here found and determined there are such unusual circumstances present on this record as, (1) cost considerations for the incremental volume of gas for the Diamond sale, (2) Humble's G–1 rate to Mississippi is lower than the cost, without transportation, overhead, etc., of the only available source of gas required for the Diamond sale, (3) the limiting aspects of Humble's present and future gas supply, (4) possible impact of a rate increase upon all other distributor purchasers from the Fowler-Baton Rouge System should Humble be required to deliver the Diamond volume of gas to Mississippi, and (5) Diamond's preference of supplier and supplier contract in awarding the sale and contract to Humble.

Humble's application to make a direct sale to Diamond should be granted because Humble has amply demonstrated on this record that the public convenience and necessity require that it be authorized to construct and operate the facilities requested in its application in order to render the service to Diamond. The evidence of record does not support the contention of Mississippi that Humble be directed to sell and deliver to it the volume of gas necessary for the Diamond sale, at Humble's G–1 rate of 17.69 cents per Mcf, so that Mississippi may make the sale to Diamond. Consistent with the Commission policy enunciated in the *Southern Natural* and the *Northern Natural* cases, *supra*, this application is decided upon its own merits and the record made herein. The "merits," or "unusual circumstances" hereinabove considered fully justify the granting of Humble's application to make the sale to Diamond and a certificate will therefore be issued.

The second of the two principal issues to be considered is the propriety of Paragraph 10 of the General Terms and Conditions of Humble's FPC Gas Tariff, Original Volume No. 1, which provides as follows:

> Buyer shall not sell gas purchased under Seller's Rate Schedule G–1 to any one industrial consumer in excess of 100,000 cubic feet per month except by written consent of Seller.

Mississippi filed a formal complaint against Humble on September 2, 1965 (Docket No. RP66-9) alleging the foregoing Para. 10 to be unjust, unreasonable, unduly discriminatory or preferential within the meaning of Sections 4 and 5 of the Natural Gas Act. On September 17, 1965, the Commission issued an "Order to Show Cause" to Humble directing it to show cause in a formal hearing why the Commission should not find and determine the aforesaid Para. 10 to be unjust and unreasonable. In this show cause order the Commission said it would "invite any of Humble's customers or other persons who are affected by this tariff provision to intervene in this proceeding in order to submit its views on this matter." [20] The show cause matter was consolidated with Docket No. CP65-395 for hearing.

Paragraph 10 has been effective as a part of the tariff since October 10, 1949 (Tr. 248). Since then, Humble and its predecessors, have granted 19 requests for additional supplies of gas for large industrial customers (Tr. 248). In only two instances has consent been refused, one in 1950 and the other in the instant case. This is the first complaint to be filed against Humble, or its predecessors, alleging Para. 10 to be unjust, unreasonable, unduly discriminatory or preferential or that Humble had been discriminatory in its application of Para. 10 (Tr. 566-567).

The Staff contends that Para. 10 is unjustly discriminatory because it permits Humble to arbitrarily withhold consent to a sale by a G-1 customer to any one industrial consumer in excess of 100 Mcf per month without stating its reasons therefor. Staff submitted a proposal to modify Para. 10 (not to strike it from Humble's tariff) providing that consent shall not be withheld except in the case of inadequacy of facilities, unavailability of gas supply and/or economic feasibility (Exh. 50). Staff's proposal would further require Humble to establish the validity of any denial of consent if Humble itself should later seek an authorization to make the sale and the G-1 customer should oppose the application. Humble has on this record shown exactly the very things proposed by the Staff; it has shown the unavailability of gas supply at a price which would permit it to make an economically feasible sale of the Diamond requirement to Mississippi.

Mississippi urges that any restriction on such new industrial sales should be designed to protect Humble from demands from a G-1 customer where it did not have gas or capacity available to meet the request and, at the same time, give the G-1 customer an opportunity to make the sale unless Humble had a legitimate reason to deny permission. Mississippi also contends that Humble's economic evidence showing the sale to Mississippi would be uneconomic is irrelevant because loss of revenue on a sale cannot justify a tariff provision which, it alleges, is discriminatory.

A former employee of the Commission, now a private consulting engineer specializing in natural gas rates and economics testified on behalf of Humble that he had reviewed the FPC Gas tariffs of natural gas companies on file with the Commission to determine if those companies selling natural gas under general service rate schedules provide, either in their tariff or service agreements or both, a limitation on their volumetric obligations for delivery of gas under such rate schedules. He testified he found that with few exceptions all pipeline sellers of general service gas make such sales under contracts which contain specific volumetric limitations, the exception to this, he said, generally involved sales under old contracts and relatively small volumes. (Tr. 518). He testified he analyzed the filed tariffs of the Class A Natural Gas Companies, of which Humble is one, and found that 45 of the Class A

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[20] No petitions or notices of intervention were filed in response to this invitation.

Companies have filed rate schedules covering general service type sales and that 38[a] of these contain a volumetric limitation on their obligation to deliver gas to their general service customers. Each of the other Class A Companies' tariff provisions contain certain provisions requiring approval of the seller before the general service buyer may attach an industrial customer. (Tr. 518–519).

It is Humble's position that Para. 10, in its present form, is just and reasonable, nondiscriminatory and nonpreferential. Humble's President testified (Tr. 551) in regard to Humble's gas supply situation and its need for the protection of Para. 10, as follows:

> Q. Is Humble Gas in a position to sell gas to its distribution customers in quantities to meet their domestic, commercial, and industrial requirements without any limit upon the loads that they might attach?
>
> A. No. Furthermore, Humble Gas Transmission Company has not undertaken such an open-ended obligation to supply gas to its distribution customers and it cannot feasibly undertake such an open-ended obligation. In fact, Humble Gas Transmission Company would not undertake such an obligation for any customer. As a practical matter, because of the many unknowns that would be involved in undertaking such an obligation, we cannot do that and we will not do so.
>
> These considerations constitute the basic necessity for the limitation in Paragraph 10 of the General Terms and Conditions of the Tariff of Humble Gas which requires the purchaser to obtain consent from Humble Gas prior to attaching a new industrial customer which would consume more than 100,000 cubic feet per month. As a business matter, we must have the protection afforded by that limitation. It has worked satisfactorily for many years in the past, and we think it can do so in the future. If we were to be compelled to alter the Tariff in this regard, there are other types of limitations which could be devised that might work satisfactorily, provided the modified limitation afforded the sort of substantive protection which is required."

Humble proposes two alternative provisions, if it is required to change the provisions of Para. 10(Exhs. 16 and 17), each of these proposals generally do the same thing as the present provisions of Para. 10 insofar as the limitation, without seller's written consent, on the attachment of large industrial loads. However, the Humble President said, each would be less favorable to the distributor than the present Para. 10.

Obviously disappointed in losing the Diamond sale, which would have increased its sales volumes by approximately 30 percent, Mississippi filed its complaint against Humble. Mississippi alleges it spent time and money in its efforts to induce Diamond to locate its new plant in Natchez. Its Industrial Development representative testified concerning his activities and that he worked with the Natchez Chamber of Commerce and the Mississippi Industrial Development Commission in a joint effort to induce Diamond to locate in Mississippi and at Natchez. Such promotional activities are the customary and normal functions of utility companies, Chambers of Commerce and the Industrial Development Commissions of the several states. Appropriate provision is made in the annual budget of each for such expenditures and the employment of personnel. While it is not specifically shown on this record, it must be assumed the promotional money spent on this, and other such ventures, will be reflected in Mississippi's cost of doing business. It therefore is without relevancy in arriving at a decision in this matter.

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[a] This number includes Humble.

Humble's operating officials testified that the sale to Diamond will place their supply of and demand for gas in balance. (Tr. 423). Therefore, until additional supplies of gas can be purchased—and any additional supplies will be more costly than the Vixen Field gas—no authorizations can be made to its G-1 distributor buyers to attach a new industrial customer who will require more than 100,000 cubic feet per month.

With its Monroe Field production rapidly declining and with no other source of supply under contract except from the Vixen Field, it would appear that Humble, looking to the future, in order to fulfill its gas supply obligation to its distributors, may simultaneously find it necessary to seek rate relief greater than its present G-1 rate of 17.69 cents per Mcf in order to recover the additional cost of higher priced sources of gas supply.

With this in mind and in a proper forum before the Commission to consider Humble's enlarged gas supply and related cost of service situation, from which new tariff provisions will inevitably flow, it is here determined and found from the evidence on this record that Para. 10, as presently set forth in Humble's filed tariff and as administered by Humble under its present supply and rate situations, is not unjust, unreasonable, discriminatory or preferential, but that it is required and necessary to Humble in its present supply situation.

### FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in these consolidated proceedings, the evidence adduced and the briefs filed, the Examiner finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

(1) Applicant, Humble Gas Transmission Company, a Delaware Corporation with its principal place of business in New Orleans, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in *Humble Gas Transmission Company*, Docket No. CP63-56 (1963), 29 FPC 162, 163, Finding No. (1).

(2) The facilities hereinabove described, all as more fully described in Humble's application, as amended and supplemented, in the proceeding in Docket No. CP65-395, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation of such facilities together with the transportation and delivery of natural gas by Humble to the Diamond National Corporation are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Humble, the Applicant, is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities, and they have already been constructed and are in operation in accordance with the authority therefor granted by a temporary certificate issued by the Commission on October 11, 1965, and the transportation and delivery of natural gas through such facilities by Humble to make the industrial sale to Diamond are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Humble, the Applicant, will submit to the Commission the data required by Section 157.7(c) (8) of the Commission's Regulations.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Humble's compliance with all applicable Commission Regulations issued under the

authority delegated to it under the Natural Gas Act and particularly the general terms and conditions as set forth in paragraphs (a), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

(7) The provisions of Paragraph 10 of the General Terms and Conditions of Humble's tariff are just, reasonable, nonpreferential and nondiscriminatory and have been applied by Humble in a nondiscriminatory manner for the best interests of all of its G–1 distributor customers.

(8) The complaint filed against Humble by Mississippi Valley Gas Company on September 2, 1965 in Docket No. RP66–9 should be dismissed and the proceeding terminated.

### ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing the Applicant, Humble Gas Transmission Company, to construct and operate the proposed facilities and to deliver natural gas as hereinbefore described, all as more fully described in the application and exhibits in the proceeding in Docket No. CP65–395, upon the terms and conditions of this Order.

(B) The certificate issued by Paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Regulations of the Commission under the Natural Gas Act and particularly the general terms and conditions as set forth in paragraphs (a), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

(C) The complaint filed against the Humble Gas Transmission Company by the Mississippi Valley Gas Company in Docket No. RP66–9 is dismissed and the proceeding is terminated.

HARRY W. FRAZEE,
*Presiding Examiner.*

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## INTERSTATE POWER COMPANY, DOCKET NO. E–7345

### SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF COMMON STOCK

(Issued May 17, 1967)

By order issued April 28, 1967, 37 FPC 824, in the above-entitled matter, the Commission authorized Interstate Power Company (Applicant) to issue and sell at competitive bidding 267,897 shares of additional Common Stock, par value $3.50 per share, subject to the provisions, among others, set forth in paragraph (B) of that order as follows:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Stock, the price per share to be received by Applicant for the Common Stock and the amount of any compensation for underwriters to be paid by Applicant in connection with the Common Stock.

Applicant filed an amendment on May 17, 1967, pursuant to the requirements of the aforementioned Commission order, in which it states among other things, that it proposes to offer the Common Stock to the stockholders at a price of $21.60 per share and that it proposes to accept as representing the lowest commitment fee, the bid of Kidder, Peabody & Co. Incorporated to receive $13,299.99 aggregate amount of compensation for commitment to purchase the Common Stock unsubscribed for by stockholders.

*The Commission finds:*

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued April 28, 1967, in the above-entitled docket, and the price to be received by Applicant for the Common Stock is reasonable.

(2) The proposed issuance and sale of Common Stock, as hereinafter authorized will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service and is reasonably appropriate for such purposes.

*The Commission orders:*

The price to be received by Applicant for the Common Stock as referred to above upon the terms and conditions, and for the purposes specified in the application as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D) and (E) of the Commission's order issued April 28, 1967, in the above docket.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## ST. JOSEPH LIGHT AND POWER COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP67-279

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 17, 1967)

On March 24, 1967, St. Joseph Light and Power Company (Applicant) filed in Docket No. CP67-279 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 150 Mcf of natural gas per day for resale and distribution in the City of Ravenwood, Missouri, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution system in the City of Ravenwood together with a regulating station and approximately 2 miles of 2-inch lateral pipeline extending from the proposed regulating station to a delivery point south of the city.

Pursuant to the instant proposal Respondent will construct, in accordance with its lateral line formula, approximately 2,500 feet of the lateral required for service to the City of Ravenwood and will provide the requested service from existing sources of gas supply without the construction of other additional facilities.

Applicant's estimated third year annual and peak day requirements are 14,400 Mcf and 150 Mcf of natural gas, respectively. Said volumes of natural gas will be purchased from Respondent pursuant to its SGS-1 Rate Schedule.

Applicant has been granted a franchise by the City of Ravenwood to provide natural gas service as proposed.

Applicant has petitioned the Missouri Public Service Commission requesting the issuance of a Certificate of Convenience and Necessity authorizing the subject proposal. Final decision on this matter is pending and will be forwarded to the Commission upon issuance.

The total estimated cost of Applicant's proposed project, exclusive of the cost to Respondent of the aforementioned 2,500 feet of lateral pipeline, is $78,000. Applicant proposes to finance its cost of construction with internally generated funds.

On April 17, 1967, Respondent filed an answer to the application herein, stating that it has no objection to the issuance by the Commission of an order as requested by Applicant.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

*The Commission finds:*

(1) Respondent, Michigan Wisconsin Pipe Line Company, a Delaware corporation with its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) Applicant, St. Joseph Light and Power Company, is a corporation organized and existing under the laws of the State of Missouri and has its principal place of business in the City of St. Joseph, Missouri.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transmission facilities with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant receiving a Certificate of Convenience and Necessity from the Missouri Public Service Commission and being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 150 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) The authorization granted by paragraph (A) above is conditioned upon receipt by Applicant of a Certificate of Convenience and Necessity from the Missouri Public Service Commission.

(C) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(D) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(E) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## SOUTH TEXAS NATURAL GAS GATHERING COMPANY AND TRUNKLINE GAS COMPANY, DOCKET NO. CP66-346; BRADCO OIL & GAS COMPANY, DOCKET NO. CI67-671

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 17, 1967)

On March 9, 1967, South Texas Natural Gas Gathering Company (Gathering Company) and Trunkline Gas Company (Trunkline) filed in Docket No. CP66-346 a joint petition to amend the order of the Commission issued in said docket on August 19, 1966, 36 FPC 489, so as to authorize a new delivery point in Beauregard Parish, Louisiana, for the exchange of natural gas, authorized in the order of August 19, 1966, all as more fully set forth in the petition to amend.

The Commission in its order of August 19, 1966, authorized Gathering Company and Trunkline to exchange up to 15,000 Mcf of gas per day, with deliveries by Trunkline to Gathering Company effected at a point in Brooks County, Texas, and deliveries by Gathering Company to Trunkline at (1) the tailgate of the Eagan gasoline plant, Acadia Parish, Louisiana, and (2) at a point in Jefferson Davis Parish, Louisiana. The exchange agreement between the parties provided for establishment, by mutual agreement, of additional delivery points for the subject exchange, but such points were not authorized by the Commission's order of August 19, 1966, which specified that the establishment of the additional delivery points would necessitate further Commission authorization.

Gathering Company and Trunkline now propose to establish an additional exchange delivery point on Trunkline's facilities in Beauregard Parish, Louisiana, for deliveries by Gathering Company to Trunkline under the subject authorization. At such point, Gathering Company will deliver to Trunkline gas purchased from Bradco Oil & Gas Company, *et al.*, in the North Starks Field, Calcasieu Parish, Louisiana. Trunkline will construct, own and operate the facilities at the new delivery point, which are estimated to cost approximately $9,000. Gathering Company will reimburse Trunkline for all costs except that of the meter run manifold, as was the case with similar presently authorized facilities.

On February 17, 1967, Gathering Company filed as a supplement to its FPC Gas Rate Schedule No. 4, a letter agreement between the parties reflecting the proposed new delivery point heretofore accepted for filing by the Commission in connection with a temporary authorization issued on March 16, 1967.

Due notice of the filing of the joint petition to amend by Gathering Company and Trunkline and opportunity for hearing has been given by publication in the Federal Register on March 24, 1967 (32 F.R. 4514). No protest or petition to intervene has been filed in this proceeding concerning this amendment.

Bradco Oil & Gas Company (Bradco) filed an application on November 21, 1966 pursuant to Section 7(c) of the Natural Gas Act for a Certificate of Public Convenience and Necessity in Docket No. CI67–671 authorizing the sale of natural gas to Gathering Company under a gas purchase agreement dated July 25, 1966. Bradco seeks to initiate the sale of natural gas to Gathering Company, from the North Starks Field, Calcasieu Parish, South Louisiana at a proposed initial rate of 16.0¢.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on May 11, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) Applicant, South Texas Natural Gas Gathering Company having its principal place of business in Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 22, 1960, in Docket No. G–18907 (24 FPC 987).

(3) Applicant Bradco Oil & Gas Co. (Operator), *et al.*, is engaged in the sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(4) The sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Bradco, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Bradco is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The sale of natural gas by Bradco, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificate heretofore issued in Docket No. CP66–346 should be amended so as to authorize the establishment of an additional exchange delivery point on Trunkline's facilities in Beauregard Parish, Louisiana, for deliveries by Gathering Company to Trunkline under the present authorization.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Bradco in Docket No. CI67-671 upon the terms and conditions of this order, authorizing the sale by Bradco of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Bradco continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Bradco. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the respective contracts particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificate.

(D) The order issuing a certificate of public convenience and necessity in Docket No. CP66-346 is amended so as to authorize the establishment of an additional exchange delivery point on Trunkline's facilities in Beauregard Parish, Louisiana, for deliveries by Gathering Company to Trunkline, as requested herein.

(E) The amendment authorized by paragraph (D) above and the rights granted thereunder are conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in paragraphs (a), (c)(3), (f) and (g) of Section 157.20 of such Regulations.

(F) The facilities authorized to be constructed and operated by Trunkline and Gathering Company shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within six months of the date of this order.

(G) In all other respects said order in Docket No. CP66-346 shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and John A. Carver, Jr.

## LAKE SUPERIOR DISTRICT POWER COMPANY, PROJECT NO. 2430

### ORDER APPROVING REDESIGNATED LICENSE EXHIBIT AND DELETING LICENSE ARTICLE

(Issued May 18, 1967)

On September 16, 1965, (34 FPC 862) the Commission issued a license to Lake Superior District Power Company, of Ashland, Wisconsin, for constructed

Project No. 2430, known as the Ladysmith Hydro Plant, located on the Flambeau River in the City of Ladysmith, Rusk County, Wisconsin.

Article 32 of the license provided for the filing by the licensee for Commission approval of revised Exhibit K prepared in accordance with the Commission's rules and regulations. The Exhibit K sheet filed with the application for license did not show the entire project boundary and hence did not conform with applicable Commission regulations. The license order pointed out (34 FPC 863) that while Exhibit K was being approved as part of the license, a revised Exhibit K was required. In addition, Article 32 required the filing of a revised Exhibit F, prepared in accordance with the regulations.

Upon further review of the information and showings made in the license Exhibits J and K and Exhibit F, it is concluded that all of the information concerning the ownership of the project lands and project boundary has been furnished.

License Exhibits J and K are designated in the license respectively as Exhibit J: (FPC No. 2430-1) General Map, and Exhibit K: (FPC No. 2430-3) Map of Project in Vicinity of Dam and Powerhouse Area.

By letter dated August 24, 1966, licensee notes that while the Exhibit K map shows only that portion of the project boundary in the vicinity of the dam (no other portion of the project being shown), the project enclosed by a boundary in its entirety and in considerable detail is shown on license Exhibit J (FPC No. 2430-1).

Licensee by letter dated December 6, 1966 authorized the Commission's staff to act for it to redesignate licensee's Exhibit J as "Exhibit J and K (FPC No. 2430-1) General Map."

*The Commission finds:*

(1) In these circumstances Article 32 of the license should be deleted from the license.

(2) The exhibit designated in subparagraph (i) of paragraph (B) of the license as Exhibit J: (FPC No. 2430-1) General Map, should be redesignated as Exhibit J and K: (FPC Nos. 2430-1) General Map, and as so redesignated conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

*The Commission orders:*

(A) The redesignated Exhibit J and K mentioned in the above finding is hereby approved as part of the license for Project No. 2430.

(B) Article 32 of the license for Project No. 2430 is hereby eliminated from the license.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-10

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 19, 1967)

On July 18, 1966, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-10 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation of natural gas in interstate commerce from a gas supply area in Reeves County, Texas, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 17.4 miles of 24-inch pipeline, together with 12.7 miles of 8 to 16-inch connecting laterals to gas sources and measuring facilities to enable it to transport gas purchased in the Hamon Field, located in Reeves County, Texas, from Texaco Inc. (Texaco) to a point on Applicant's existing 24-inch pipeline near the Coyanosa Processing Plant located in Pecos County, Texas.

Applicant states that it has entered into a gas purchase contract with Texaco for the purchase of up to 100,000 Mcf per day from the Hamon Field where the total proved and probable reserves are estimated at over two trillion cubic feet, five hundred and thirty-two billion cubic feet of which are committed to Applicant under the contract.

Pursuant to the contract with Texaco, Applicant further states that it will gather the gas and deliver it for conditioning and treatment at Texaco's proposed plant. Applicant proposes to construct various sizes of gathering lines from existing and proposed wells. The 8 to 16-inch lines and the 24-inch line from the Hamon Field to Coyanosa will be known as the Reeves System.

The total estimated cost of Applicant's proposed facilities is $1,786,100, which cost will be financed with cash on hand.

Texaco has filed for authorization to sell the gas to Northern in Docket No. CI67–36. The contract between Applicant and Texaco provides for advance payments should gas not commence to flow by April 1, 1967. In view of the Commission's action with respect to the Shell-El Paso advance payments in Docket No. CI66–897, *et al.*, the Commission is incorporating herein a condition relating to such advance payments.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 18, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibit, submitted in support of the authorizations sought, and upon consideration of the record,

***The Commission finds:***

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, and exhibits, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs

(a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that certain conditions relating to advance payments by Applicant be provided herein.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Any advance payments for natural gas made by Northern to Texaco in accordance with Section 3 of Article X of the subject contract shall be made by Northern at its own risk. The proper treatment for rate making purposes in any Northern rate proceeding and the resulting effect of any such payments will be determined in connection with the final disposition of the application of Texaco Inc. in Docket No. CI67-36.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-194*

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 19, 1967)

On January 3, 1967, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-194 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and to sell and deliver natural gas to new and existing distributors in order to provide natural gas service to 51 communities in the States of Minnesota, Iowa, Wisconsin, Michigan and Nebraska, all as more fully set forth in the application in this proceeding (Phase I).

Specifically, Applicant proposes to construct and operate 4.6 miles of 36-inch loop line north of Beatrice, Nebraska, 280 miles of various diameter branch lines and 47 sales measuring stations. The total estimated cost of these proposed facilities is $5,713,950, which cost will be financed from funds on hand, reserve accruals and retained earnings.

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* The application in this docket is divided into two Phases. This order pertains exclusively to Phase I of said application.

The gas will be distributed in the communities by new and existing distributor customers and Applicant's Peoples Division as shown in Appendix A hereof.

Applicant's proposed sales of gas to distributor customers for resale will be made in accordance with Applicant's appropriate effective FPC Gas Rate Schedules.

Several petitions to intervene have been filed in this proceeding; one of said petitions has been withdrawn and none of the remaining petitions requests formal hearing or objects to the disposition of this application pursuant to the statutory hearing procedure. Inasmuch as the statutory hearing procedure is being used herein, no further action on said petitions appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 18, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits (Phase I), submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding (Phase I), are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding (Phase I), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) In the event the actual volumes of sales on any of the proposed branch lines in the third full calendar year of operation exceed the projected total for that branch line, as reflected in Appendix B hereof, Applicant within 60 days thereafter shall submit for the Commission's approval a plan for refunding all or part of any payments made to Applicant so as to conform to actual experience. Such refunds shall be determined by utilizing the same factors used in this proceeding, except that volumes of sales (both contract demand and annual volumes) made at the time such refunds are determined shall be used.

(E) The certificate issued in paragraph (A) above shall not become effective, insofar as it authorizes Applicant to construct the proposed Grasston, Minnesota, branch line, until Applicant submits a contract covering the sale of gas to Le Center Alfalfa Dehydrating Company.

(F) The authorization granted in paragraph (A) above is without prejudice by Applicant's right to request amendment of the subject order to authorize Phase II facilities.

(G) First Revised Sheets Nos. 126-A through 126-D to Applicant's FPC Gas Tariff, Second Revised Volume No. 1, providing for Initial Period Service are accepted for filing to become effective concurrently herewith.

## APPENDIX A

### NORTHERN NATURAL GAS CO.

[Contract demand for the 51 proposed new communities mcf @ 14.73 psia]

| Line No. | Gas utility community | Contract demand—Mcf | | |
|---|---|---|---|---|
| | | 1st year (1) | 2d year (2) | 3d year (3) |
| 1 | Great Plains Natural Gas Co.: | | | |
| 2 | Appleton, Minn | 341 | 572 | 718 |
| 3 | Cottonwood, Minn | 161 | 262 | 296 |
| 4 | Hancock, Minn | 171 | 275 | 312 |
| 5 | Lamberton, Minn | 228 | 344 | 425 |
| 6 | Madison, Minn | 310 | 509 | 641 |
| 7 | Sanborn, Minn | 122 | 194 | 220 |
| 8 | Total | 1,333 | 2,156 | 2,612 |
| 9 | Iowa Electric Light and Power Co.: | | | |
| 10 | Coulter, Iowa | 114 | 154 | 177 |
| 11 | New Providence, Iowa | 79 | 114 | 131 |
| 12 | Thornton, Iowa | 174 | 228 | 255 |
| 13 | Total | 367 | 496 | 563 |
| 14 | Iowa Power and Light Co.: | | | |
| 15 | Underwood, Iowa | 81 | 146 | 178 |
| 16 | Iowa Public Service Co.: | | | |
| 17 | Cylinder, Iowa | 41 | 54 | 63 |
| 18 | Denver, Iowa | 163 | 215 | 256 |
| 19 | Newell, Iowa | 204 | 269 | 321 |
| 20 | Rockwell, Iowa | 145 | 194 | 231 |
| 21 | Total | 553 | 732 | 871 |
| 22 | Lake Superior District Power Co.: | | | |
| 23 | Bayfield, Wis | 210 | 357 | 400 |
| 24 | Bergland, Mich | 101 | 167 | 189 |
| 25 | Ewen, Mich | 99 | 164 | 190 |
| 26 | Washburn, Wis | 365 | 632 | 702 |
| 27 | Total | 775 | 1,320 | 1,481 |

APPENDIX A—continued

| Line No. | Gas utility community | Contract demand—Mcf 1st year (1) | 2d year (2) | 3d year (3) |
|---|---|---|---|---|
| 28 | Minnesota Natural Gas Co.: | | | |
| 29 | Albany, Minn | 175 | 260 | 315 |
| 30 | Benson, Minn | 422 | 667 | 832 |
| 31 | Freeport, Minn | 83 | 124 | 150 |
| 32 | Glenwood, Minn | 322 | 521 | 651 |
| 33 | Melrose, Minn | 270 | 425 | 515 |
| 34 | Starbuck, Minn | 200 | 314 | 384 |
| 35 | Total | 1,490 | 2,311 | 2,847 |
| 1 | Minnesota Western Gas Co.: | | | |
| 2 | Morris, Minn | 729 | 1,124 | 1,386 |
| 3 | North Central Public Service Co.: | | | |
| 4 | Fenton, Iowa | 145 | 200 | 250 |
| 5 | Grasston, Minn | 30 | 60 | 80 |
| 6 | Isanti, Minn | 80 | 180 | 270 |
| 7 | Lone Rock, Iowa | 60 | 85 | 105 |
| 8 | Ringsted, Iowa | 160 | 230 | 290 |
| 9 | Wesley, Iowa | 120 | 170 | 220 |
| 10 | Yale, Iowa | 85 | 135 | 170 |
| 11 | Total | 680 | 1,060 | 1,385 |
| 12 | Peoples Natural Gas Division: | | | |
| 13 | Cyrus, Minn | 169 | 202 | 220 |
| 14 | Lake Park, Iowa | 306 | 436 | 485 |
| 15 | Lowry, Minn | 146 | 179 | 193 |
| 16 | Luana, Iowa | 75 | 91 | 99 |
| 17 | Marble Rock, Iowa | 229 | 275 | 295 |
| 18 | Mitchell, Iowa | 127 | 146 | 155 |
| 19 | Oakland, Minn | 59 | 70 | 74 |
| 20 | Peru, Neb | 546 | 619 | 647 |
| 21 | Readlyn, Iowa | 204 | 290 | 319 |
| 22 | Revere, Minn | 90 | 105 | 113 |
| 23 | Ridgeway, Iowa | 159 | 189 | 207 |
| 24 | Royal, Iowa | 248 | 298 | 325 |
| 25 | St. Ansgar, Iowa | 280 | 416 | 470 |
| 26 | Tracy, Minn | 582 | 885 | 1,005 |
| 27 | Trimont, Minn | 255 | 363 | 401 |
| 28 | Walnut Grove, Minn | 251 | 361 | 396 |
| 29 | Worthington, Iowa | 160 | 194 | 213 |
| 30 | Total | 3,886 | 5,119 | 5,617 |
| 31 | Western Power and Gas Co.: | | | |
| 32 | Greenwood, Neb | 178 | 203 | 230 |
| 33 | Wisconsin Gas Co.: | | | |
| 34 | Tunnel City, Wis | 58 | 68 | 81 |
| 35 | Total all utilities | 10,130 | 14,735 | 17,251 |

## APPENDIX B

## NORTHERN NATURAL GAS CO.

## SUMMARY OF CONTRIBUTIONS BY DISTRIBUTOR

| Line No. | Branch line (1) | Distributor (2) | Contribution (3) | Line No. (4) |
|---|---|---|---|---|
| 1 | Cylinder, Iowa | IPS[1] | 22,862 | 1 |
| 2 | Denver, Iowa | IPS | 18,591 | 2 |
| 3 | | PNGD[2] | 18,136 | 3 |
| 4 | | | 36,727 | 4 |
| 5 | Greenwood, Neb | WP&G[3] | 1,133 | 5 |
| 6 | Lake Park, Iowa | PNGD | 43,620 | 6 |
| 7 | Newell, Iowa | IPS | 129,327 | 7 |
| 8 | Rockwell, Iowa | IPS | 64,458 | 8 |
| 9 | Tracy, Minn | GP[4] | 24,696 | 9 |
| 10 | | PNGD | 58,429 | 10 |
| 11 | | | 83,125 | 11 |
| 12 | Underwood, Iowa | IP&L[5] | 58,449 | 12 |
| 13 | Total Contributions | | 439,701 | 13 |

[1] Iowa Public Service Co.

[2] Peoples Natural Gas Division.

[3] Western Power and Gas Co.

[4] Great Plains Natural Gas Co.

[5] Iowa Power and Light Co.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E-7347

### ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued May 19, 1967)

Northern States Power Company (Applicant), incorporated under the laws of the State of Minnesota and doing business in the States of Minnesota, North Dakota and South Dakota with its principal place of business at Minneapolis, Minnesota, filed an application on April 11, 1967, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of $30,000,000 principal amount of First Mortgage Bonds, due 1995.

Applicant furnishes electric service at retail in 424 communities and adjacent rural territories and electric energy at wholesale for resale in 29 additional communities and to 8 other utility companies, including its subsidiary, Northern States Power Company, a Wisconsin corporation.

The $30,000,000 First Mortgage Bonds are to be dated as of June 1, 1967, and are to mature on June 1, 1995. The interest rate will be determined by the most favorable bid received and accepted. They are to be issued under and secured by a Trust Indenture dated February 1, 1937, from the Applicant to Harris Trust and Savings Bank of Chicago, as Trustee, as supplemented by 15 Supplemental Indentures and to be further supplemented by a new Supplemental Indenture to be dated as of June 1, 1967.

Applicant intends on or about May 29, 1967, to invite sealed, written proposals for the purchase from it of the $30,000,000 new Bonds. The Statement of Terms and Conditions Relating to Bids will contain the following principal provisions:

> Each proposal, which may be made by a single bidder or by a group of bidders, must be for the purchase of all the Bonds. No bidder may submit

> or participate in more than one proposal. Proposals must be submitted to the Applicant at or before 10 a.m., CDST, on June 6, 1967, at the 8th Floor Assembly Room, Harris Trust and Savings Bank, 111 West Monroe Street, Chicago, Illinois. Each proposal must be accompanied by a deposit in the amount of $300,000.
>
> Each proposal shall specify: (a) the annual interest rate to be borne by the Bonds, which rate shall be a multiple of ⅛th of 1%, and (b) the price (exclusive of accrued interest) to be paid to the Applicant, which price shall not be less than 99% and not more than 102¾% of principal amount thereof. Each proposal shall provide that accrued interest from June 1, 1967, to the date of payment for the Bonds and delivery thereof will be paid by the purchaser or purchasers to the Applicant.
>
> Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Statement of Terms and Conditions, it will accept the bid which provides for the lowest annual cost of money.

The proceeds from the new Bonds will be used for payment on short-term notes which Applicant estimates will total about $37,000,000* on the date of the issuance and delivery of the new Bonds. The Applicant has been issuing notes to furnish a portion of the funds for its 1967 construction program which has an estimated cost of $99,860,000. This program includes $50,570,000 for electric production facilities, $18,300,000 for electric transmission facilities; $19,400,000 for electric distribution facilities and $11,590,000 for gas, heating, telephone and general facilities. The largest item in the program is $37,170,000 for a 590,000 kw Allen S. King Generating Plant. This program also includes $5.8 million for construction work on the 500 mw Monticello Nuclear Plant.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on April 26, 1967 (32 F.R. 6466), stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before May 5, 1967, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

On April 17, 1967, Public Service Commission of North Dakota issued an order approving the issuance of the proposed First Mortgage Bonds.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 3, 1965, *Northern States Power Company*, Docket No. E-7202 (33 FPC 942).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and

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* By order issued March 10, 1967, 37 FPC 526, the Commission authorized Applicant to issue promissory notes in amounts not exceeding an aggregate of $50,000,000.

compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(5) The period of public notice is reasonable.

*The Commission orders:*

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

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Before Commissioners: Lee C. White, Chairman; Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY AND CITY OF EVERETT, WASHINGTON, PROJECT NO. 2157

### ORDER PROVIDING FOR HEARING AND CONTINUED WATER RELEASES

(Issued May 19, 1967)

Upon the Commission's own motion, we are ordering that a hearing be held on questions affecting the operation of the project works and water releases from Culmback Dam, one part of a three-dam project licensed as Project No. 2157. Project No. 2157 was authorized for construction in two stages, the first of which has been completed and provides only for the water supply of the City of Everett. Article 28 of the license calls for commencement of construction of the second stage, the power phase, six years from the date of issuance of the license.

In directing this hearing upon the Commission's own motion and the issues specified, the Commission intends that there be consideration of issues raised in the joint petition and complaint for emergency hearing filed by the Washington State Departments of Fisheries and Game on May 15, 1967 and any responses thereto. To facilitate that consideration, this order provides a 10-day period within which joint licensees may respond to the petition and complaint.

Subject to further Commission order in the light of any responses filed herein, the specific issues to be heard shall be as follows: whether the Commission should prescribe additional rules and regulations governing project operations during the period of repair or maintenance of the Culmback Dam and other project works, water releases during that period or future periods of project operation repair or maintenance, the amounts of any such releases and the manner of completing project repairs or maintenance? Subsidiary questions may include *inter alia* whether:

(1) Inspection of the tunnel shows repairs are necessary to the Culmback dam tunnel this year.

(2) Water releases should be required if immediate repairs are necessary.

(3) If immediate repairs are not necessary what provisions, if any, shall be made for future water releases during periods of inspection and repair.

Information available to the Commission indicates that licensee City of Everett proposes to undertake project inspection operations (Culmback Dam) on or about June 1, 1967 in preparation for later project repairs or maintenance. It is anticipated that the results of that inspection and any recommendations will be presented by licensee at the hearing hereinafter provided.

*The Commission further finds:*

(1) It is necessary and appropriate for the purposes of the Federal Power Act, the Commission's Regulations thereunder and the license for Project No. 2157, that a hearing be ordered as hereinafter provided.

(2) The period of public notice given in this matter is reasonable and good cause exists for a 10 day period within which answers to the joint petition and complaint may be filed.

*The Commission orders:*

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 4(g), 9, 10, 308 and 309 thereof, and pursuant to the terms and conditions of Articles 28 and 31 of the license for Project No. 2157, a public hearing shall be held in Seattle, Washington, commencing 10:00 a.m. (PDT), June 5, 1967 at a location to be fixed by notice of the Secretary.

(B) Within 10 days from the issuance of this order answers to the joint petition and complaint of the Washington State Departments of Fisheries and Game may be filed with the Commission in accordance with the requirements of Sections 1.15–1.17 of the Commission's Rules of Practice and Procedure.

(C) Pending further order of the Commission licensees shall continue present releases of water at Culmback Dam subject however to the termination thereof during a period not exceeding eight hours to facilitate inspection of the Culmback Dam on or about June 1, 1967.

(D) Notices of Intervention and Petitions to Intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before May 29, 1967. Petitioners may participate in the hearing subject to Commission action on their petitions to intervene.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-233

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ORDER DENYING PETITION FOR LEAVE TO INTERVENE

(Issued May 19, 1967)

On January 20, 1966, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP66-233, as amended on August 15, 1966, and February 2, 1967, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities over the three year period 1966-68 and an increase in sales and natural gas service by 397,106 Mcf per day to existing customers in each of the years 1966-69, all as more fully set forth in the application, as amended, in this proceeding.

Specifically, Applicant proposes to construct and operate during the three year period a total of 914 miles of pipeline in the states of Texas, Louisiana, offshore Louisiana, Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, New Jersey and New York, and 61,170 additional compressor horsepower at compressor stations located in the states of Texas, Louisiana, Georgia, South Carolina, Virginia and Maryland.

Applicant proposes in its application, as amended, to sell gas and to render natural gas service totalling 384,106 Mcf per day under its appropriate firm pipeline resale and storage FPC Gas Rate Schedules. Applicant also requests authorization to increase by 10,000 Mcf per day its transportation service for Sun Oil Company under Applicant's FPC Gas Rate Schedule X-11 and to deliver, on a firm basis, 3,000 Mcf per day to an industrial customer, Owens-Corning Fiberglas Corporation. Additionally, Applicant proposes to continue annual sales of 2,000,000 Mcf to Carolina Pipeline Company under Applicant's FPC Gas Rate Schedule ACQ-2; Applicant also proposes to make a new sale under this latter rate schedule to North Carolina Natural Gas Corporation in the annual amount of 2,000,000 Mcf.

The total estimated and actual cost of the proposed facilities is $245,750,000, which cost will be financed initially through temporary bank loans and cash on hand; permanent financing, as needed, will be by the issuance of first mortgage pipeline bonds and debentures.

Applicant was issued temporary certificates on May 26 and September 30, 1966 authorizing 1966 proposals.

On February 17, 1966, Atlantic Seaboard Corporation filed a petition to intervene in this proceeding requesting either a formal hearing or a condition to be attached to any certificate issued to Applicant. Applicant proposes herein to sell additional gas to Commonwealth Natural Gas Corporation (Commonwealth). Commonwealth is also a customer of Seaboard. Accordingly, Seaboard, in the form of a continuing objection, requests that the disposition of Applicant's proposals in the subject docket to sell additional volumes to Commonwealth be governed by the ultimate disposition, after court review, if any, of the competitive proceeding in Docket No. CP65-102, *et al.;* Applicant's certificate in this proceeding will be so conditioned.

On February 17, 1966, the Village of Freeport, New York, filed a petition to intervene in this proceeding; on February 28, 1966, Applicant and Long Island Lighting Company (LILCO), which also has filed a petition to intervene, filed separate answers in opposition to the granting of the Village's petition.

One of Applicant's proposals in this docket is to construct and operate a natural gas pipeline traversing a new route to the termini of its system in the New York Metropolitan Area extending from a point near New Brunswick, New Jersey, to the New Jersey shore near Laurence Harbor and thence across Lower New York Bay to a point at Long Beach, Long Island, New York. In addition Applicant proposes to transport and sell additional quantities of natural gas through the aforementioned facilities to LILCO.

The Village states that it is engaged in the generation of approximately half of the electric energy distributed in the Village and it purchases the balance from LILCO. LILCO presently sells gas at retail in the Village although, the Village alleges, it does not have the exclusive right to do so. The petition states that the Village is planning the construction of a new electric generating station and is "working on plans to purchase firm gas for local distribution to the public and for utilization in its generating stations". The petition goes on to say, "Freeport has had discussions with officials of Transcontinental Gas Pipe Line Corporation ("Transco") and there do not appear to be any obstacles to the sale to Freeport of an adequate supply of firm gas in the order of 4000 Mcf per day under Transco's filed rate schedules,"* and that, "The most feasible way for this gas to be transported to Freeport from Long Beach is by means of a transportation contract with LILCO * * *"

The Village states that its "chief interest in this proceeding is to be assured that it will have a fair and reasonable opportunity to obtain its required supply of gas as soon as it completes the study of its project; that the terminal be so located as to be accessible, from a physical and engineering view, to connection by Freeport; and that the authorization to Transco including any sales to LILCO, be such as not to interfere with the capability and feasibility of Freeport's future project". The Village does not request an allocation of gas in the instant petition.

The Village alleges that it has a substantial interest in the instant proceeding which will not be adequately represented by others and which may be adversely affected and that the Village's participation will be in the public interest. Section 1.8(b) of the Commission's Rules of Practice and Procedure contemplates participation as an intervener by a party whose interest may be directly affected and not adequately represented by existing parties and to which the intervener may be bound by the Commission's action or any interest of such nature that participation as an intervener may be in the public interest.

The Village seeks to justify its participation in this proceeding by virtue of the fact that sometime in the indefinite future it might possibly become a customer of Applicant. The Village does not presently use natural gas in its electric generating plant and does not operate a natural gas distribution system. It has no natural gas requirements. The Village's standing is similar to that of persons alleging that at some time in the future they may be competitors of an Applicant and upon this premise seek leave to intervene. In the latter cases the Commission has found it necessary for the effective administration of the Natural Gas Act to deny the prospective competitors the right to participate. *Vermont Gas Systems, Inc.*, Docket No. CP65-141, *et al.*, 33 FPC 142; *Pacific Northwest Pipeline Corporation, et al.*, Docket No. G-13018, *et al.* (December 14, 1965).

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* In its answer, Transco states that this is not correct.

Aside from the Village's position as a potential customer of Applicant, the petition to intervene presents nothing to indicate that its grant or the Village's participation in this proceeding would be in the public interest. Accordingly, the petition will be denied.

Several other petitions to intervene and a notice of intervention have been filed in this proceeding. Such filings have either been in support of the subject application, do not request a formal hearing or have been withdrawn. Inasmuch as this proceeding is being disposed of pursuant to the statutory hearing procedure, no other action on said petitions or notice appears necessary.

After due notice, no other petition to intervene, other notice of intervention or protest to the granting of the application, as amended, has been filed.

At a hearing held on May 18, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendments and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 145).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding are to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and/or sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of the subject facilities and the proposed transportation and/or sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) The Village of Freeport, New York, is not a customer of Applicant with an interest which may be directly affected and which is not adequately represented by existing parties and as to which the Village may be bound by the Commission's action in this proceeding.

(7) It is not appropriate in the proper administration of the Natural Gas Act and in the public interest to permit the Village of Freeport, New York, to intervene and participate in this proceeding.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities set out in Section 2 of Exhibit K to the Second Amendment to the subject application and to transport and/or sell natural gas as hereinbefore described, all as more fully described in the application, as amended, in this proceeding, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity is issued authorizing Applicant to construct and operate the proposed facilities as summarized in Section 3 of Exhibit K to the Second Amendment to the subject application on the condition that, in the event Applicant's proposal in Docket No. CP65-181 (Phase II) is denied and in the event Applicant is unable to demonstrate to the Commission that said facilities are required to render other sales and services, said facilities shall be removed from Applicant's rate base.

(C) The certificates issued by paragraphs (A) and (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(D) The facilities authorized in paragraph (A) above shall be constructed and placed in actual operation and the transportation and/or sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months from the date on which this order issues.

(E) The facilities conditionally authorized in paragraph (B) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months from the date a final order issues authorizing the service proposed by Transcontinental Gas Pipe Line Corporation in Docket No. CP65-181 (Phase II).

(F) Prior to the commencement of construction of those facilities proposed to be constructed in the year 1968 (as summarized in Applicant's Second Amendment to its application in this proceeding, Exhibit K, Summary of Docket) Applicant shall submit satisfactory proof of sales commitments for that phase of its proposed expansion.

(G) The authorization hereinabove granted for additional service to Commonwealth Natural Gas Corporation is subject to the ultimate disposition, after court review, if any, of the competitive proceedings at Docket No. CP65-102, *et al.*

(H) The petition for leave to intervene filed by the Village of Freeport, New York, on February 17, 1966, is denied.

## APACHE CORPORATION, DOCKET NO. CI61-336; VAN GRISSO OIL COMPANY, CI63-59; AN-SON CORPORATION, CI63-370; PETROLEUM INTERNATIONAL, INC. (OPERATOR), ET AL., CI64-520

### ORDER ADOPTING AND MODIFYING INITIAL DECISION OF THE PRESIDING EXAMINER

(Issued May 22, 1967)*

### *Syllabus*

1. An essential consideration in issuance of permanent certificates is whether "price is right"—price should be neither higher nor lower than existing level at which substantial volumes of gas are contracted for sale and moved in interstate commerce. PP. 964, 969.
2. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity to producer-applicants for sales in the Oklahoma Panhandle area, conditioned on an "in-line" price of 17 cents per Mcf.

*William T. Kilbourne* and *Herbert W. Varner* for The Superior Oil Company.

*Donald K. Young* for H. L. Hunt.

*Lawrence Q. Garcia, Mary Moran Pajalich* and *J. Calvin Simpson* for The People of the State of California and Public Utilities Commission of the State of California.

*John S. Cooper, F. T. Searles, M. H. Furbush* and *Stanley T. Skinner* for Pacific Gas and Electric Company.

*John Ormasa* and *H. L. Goth* for Southern California Gas Company and Southern Counties Gas Co. of California.

*Paul S. Davis* for Michigan Wisconsin Pipe Line Company.

*C. Louis Knight* for the Staff of the Federal Power Commission.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

This proceeding involves four applications under Section 7(c) of the Natural Gas Act by the above-named independent producers requesting certificates of public convenience and necessity authorizing the sale in interstate commerce for resale of natural gas produced in Beaver, Harper and Woodward Counties, Oklahoma, in the northwest Oklahoma Panhandle Area. The purchasers are two large pipeline companies, El Paso Natural Gas Company, which proposes to purchase from Apache Corporation, and Michigan Wisconsin Pipe Line Company, which proposes to purchase from Van Grisso Oil Company, An-Son Corporation, and Petroleum International, Inc.

Hearings were held on January 5 and 27, 1967, at which, evidence was submitted by staff on the issue of the appropriate price at which permanent certificates should be granted. On April 12, 1967, Presiding Examiner Harry C. Shriver issued an initial decision granting a certificate of public convenience and necessity to each of the above-named applicants, subject to certain specified conditions, and ordering that a price of 17 cents per Mcf at 14.65 psia, including reimbursement for taxes, be established as the in-line price for natural gas sold by the four applicants in the Oklahoma Panhandle Area.

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* Initial decision appears on p. 965.

No exceptions have been filed to the Examiner's initial decision. However, upon examination thereof the Commission finds it appropriate to modify certain of the Examiner's technical language to conform with the policy established in Opinion Nos. 390, 29 FPC 1175, 390–A, 30 FPC 479, and 464, 33 FPC 1228. Specifically, such modification is to be accomplished by the following language changes: (1) the insertion in the Examiner's ordering paragraph (B) of a limiting upward Btu adjustment (where such adjustment was not present in the rate schedule) for gas not processed in the plant because of the buyer's unilateral election to by-pass the plant; (2) the insertion in the Examiner's ordering paragraph (C) of a general proportional downward Btu price adjustment to apply to any rate rather than a specific downward price adjustment based upon the present rate; and (3) the deletion from the Examiner's ordering paragraphs (B) and (D) of the requirement that Apache Corporation file rate schedules (since it has already filed rate schedules) rather than supplements to comply with prescribed conditions.

*The Commission finds:*

Upon consideration of the entire record in this matter, the initial decision of the Presiding Examiner, subject to the above-described modifications in ordering paragraphs (B), (C), and (D), should be adopted as the decision of the Commission.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to each of the applicants, Apache Corporation, Van Grisso Oil Company, An-Son Corporation, and Petroleum International, Inc., for the sale in interstate commerce of natural gas for resale as proposed in its application upon the terms and conditions of this order.

(B) The Apache Corporation shall file with the Federal Power Commission within 30 days from the date of this order an amendment or supplement to a gas rate schedule now on file with the Commission, providing for an initial price replacing the initial price as proposed for gas sold under its contract in this proceeding, of 17.0 cents per Mcf at 14.65 psia, including reimbursement for taxes, and subject to the following adjustment:

> The initial rate, for gas processed by the removal of liquid hydrocarbons, shall be adjusted by adding thereto Apache's share of revenues received from the liquid hydrocarbons in accordance with the contract revenue-sharing provisions, and

such rate shall be further adjusted for processing shrinkage by dividing such shrinkage between the Apache Corporation and the El Paso Natural Gas Company in the same proportions as the division of the revenues from the liquid hydrocarbons. As to gas not processed for the removal of liquid hydrocarbons because of El Paso's unilateral election to take quantities in excess of the capacity of its processing plant, the rate schedule may provide for an upward adjustment of 1/100 cent per Mcf for each Btu in excess of 1052 Btu per cubic foot of gas, not to exceed 0.95 cents per Mcf at 14.65 psia.

(C) Each of the applicants, the Van Grisso Oil Company, the An-Son Corporation, and Petroleum International, Inc., shall file with the Federal Power Commission within 30 days from the date of this order an amendment to its rate schedule now filed with the Commission, providing for an initial well-head price of 17.0 cents per Mcf at 14.65 psia, including tax reimbursement, for gas sold under its contract in this proceeding replacing the initial rate as proposed. The initial price shall be subject to upward adjustment for gas containing more than 1000 Btu per cubic foot as proposed in the contract, provided that the applicant's rate schedule shall also provide for a proportional downward price adjustment provision from a base no lower than 1000 Btu.

(D) Each applicant (B) and (C) shall file with the Commission within 30 days after the date of this order an amendment or a supplement to a gas rate schedule now on file with the Commission, complying with the conditions prescribed herein.

(E) The initial decision of the Presiding Examiner issued herein on April 12, 1967, is modified as above set forth, and as so modified said decision, including ordering paragraphs (E) through (H) therein set forth, is adopted by the Commission as its decision in this proceeding, effective as of the date of issuance of this order.

### INITIAL DECISION

### OF THE PRESIDING EXAMINER GRANTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO SECTIONS 7(c) AND (e) OF THE NATURAL GAS ACT

(Issued April 12, 1967)

SHRIVER, *Presiding Examiner:* Each of the four producers in this proceeding has filed an application pursuant to Section 7(c) of the Natural Gas Act, seeking a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce. The gas to be sold comes from the Oklahoma Panhandle; namely, from Beaver, Harper, and Woodward Counties.[1] The purchasers are two large pipeline companies. The Apache Corporation will sell to the El Paso Natural Gas Company. The Van Grisso Oil Company, the An-Son Corporation, and Petroleum International, Inc., will sell to the Michigan Wisconsin Pipe Line Company. The issue in the case is the appropriate price at which permanent certificates should be granted commonly called the "in-line" price.

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[1] See Appendix I reproduced from the Staff's brief.

### *Procedure*

On September 15, 1966, the Commission issued an order consolidating 13 dockets in *The Superior Oil Company (Operator), et al.*, Docket No. G–16878, *et al.*, which included the 4 instant dockets.[2] Thereafter, public and consumers' interests in California and in Michigan, and one of the pipelines filed notices or petitions to intervene.[3] On October 24, 1966, the Commission issued an order permitting the withdrawal and severance of Docket No. CI64–604 from the consolidated proceeding, *Superior Oil Company (Operator), et al.*, Docket No. G–16878. Eight of the remaining dockets in the consolidated proceeding were severed and permanent certificates issued therein at 17 cents per Mcf at 14.65 psia with adjustments, pursuant to Commission orders dated January 11 and 24, 1967, and February 15, 1967.

A prehearing conference was held in the consolidated proceeding on October 23, 1966. Hearings were scheduled and were held on January 5 and 27, 1967. The only evidence offered was that of the Staff. The only applicants who appeared, or were represented by counsel, were *The Superior Oil Company* (Docket No. G–16878) and H. L. Hunt (Docket No. CI63–182). The applicants in the eight dockets mentioned above filed motions for severance or letters which were treated as such consenting to accept permanent certificates for the sale of gas under their respective applications at an initial price of 17 cents per Mcf at 14.65 psia and subject to specified conditions.[4] There was no objection to the issuance of these certificates by the intervenors. Details as

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[2] The Applicants and dockets consolidated in the initial proceeding under the Commission's order of September 15, 1966, were as follows:

| | *Docket Nos.* |
|---|---|
| The Superior Oil Co (Operator), *et al* | G–16878. |
| Petroleum, Inc | CI61–226. |
| Sunset International Petroleum Corp., *et al* | CI61–356. |
| John R. Crain and Malcom Deisenroth, Jr., successors to Carol Doube Sutton, *et al* | CI61–1119. |
| H. L. Hunt | CI63–183. |
| Roland S. Bond | G–17090. |
| Sam K. Vierson | CI62–90. |
| Van Grisso Oil Co | CI63–59. |
| An-Son Corp | CI63–370. |
| Petroleum International, Inc | CI64–520, CI64–604. |
| Payne Petroleum Corp | CI65–1143. |
| Apache Corp | CI61–336. |

[3] On October 10, 1966, the People of the State of California and the Public Utilities Commission of the State of California, jointly, filed a Notice of Intervention in one of the instant dockets (CI61–336) and four other dockets. On October 13, 1966, the Pacific Gas and Electric Company petitioned for leave to intervene in the same dockets. On October 14, 1966, the Michigan Wisconsin Pipe Line Company petitioned to intervene in the three remaining instant dockets (CI64–520, CI63–59, and CI64–370) and five others. On October 17, 1966, the County of Wayne, Michigan, petitioned to intervene in the same dockets.

[4] The permanent certificates covering sales by the producers to the Michigan Wisconsin Pipe Line Company were issued subject to the conditions set forth in paragraphs (C), (D), and (E) of the order accompanying Opinion No. 353, *Michigan Wisconsin Pipe Line Company, et al.*, Docket No. CP61–102, *et al.*, 27 FPC 449, 462–463, and paragraphs (B) and (C) of the order accompanying Opinion No. 464, Texaco Inc., *et al.*, Docket No. G–8087, *et al.*, 33 FPC 1228, 1237. The permanent certificates covering sales by the producers to the El Paso Natural Gas Company were issued subject to the conditions set forth in paragraphs (G) and (H) of the order accompanying Opinion No. 390, *El Paso Natural Gas Company, et al.*, Docket No. G–17849, *et al.*, 29 FPC 1175, 1187–1188, as modified by Opinion No. 390–A, 30 FPC 479.

to the settlements and severances are set forth in the above orders of January 11 and 24, 1967, and February 15, 1967. We turn now to the four applicants involved in the instant proceeding.

### *Facts and Contracts*

The Applicants, Van Grisso and An-Son (Docket Nos. CI63–59 and CI63–370) propose, by their applications, to sell natural gas at an initial rate of 19.5 cents per Mcf at 14.65 psia, plus a Btu adjustment, and plus a Btu adjustment and a tax reimbursement, respectively.[5] Petroleum International, Inc., and the Apache Corporation (Docket Nos. CI64–520 and CI61–336) propose to sell gas at 19.5 and 21.0 cents per Mcf at 14.65 psia, including tax reimbursement plus Btu adjustment, and revenues from the sale of liquids, respectively.[6] Each of the four Applicants is presently authorized to sell natural gas under a temporary certificate at 17 cents per Mcf at 14.65 psia. They here seek permanent certificates of authorizations at the higher initial rates.

The Apache contract is dated August 10, 1960, a little more than a month before the Commission promulgated its guideline price for the Oklahoma Panhandle area on September 28, 1960. (Statement of General Policy No. 61–1, 24 FPC 818; Rules of Practice and Procedure, Section 2.56(a)). The other contracts are dated subsequent thereto, An-Son July 26, 1962, Petroleum International, August 28, 1963, and the Van Grisso contract, as amended, April 1, 1965. All of the contracts run for 20-year terms and provide for periodic price escalation. Under the Apache contract the gas is to be delivered to El Paso either at the well mouth or at the outlet of Apache's separators, if installed, at a maximum pressure of 800 psig and a minimum pressure of 100 psig. In the three sales to Michigan Wisconsin the delivery point is either at the wellhead or at the outlet of the well separator. The maximum delivery pressure under the An-Son and Petroleum International contracts is 1050 psig; under the Van Grisso Oil Company contract it is at the wellhead pressure. The minimum delivery pressure under the latter three contracts is 100 psig.

### *"In-Line" Price*

Mr. Eugene C. Zamboni, an engineer employee in the Production Division of the Commission's Bureau of Natural Gas, appeared for the Staff and testified that in his opinion the "in-line" price for the sale of natural gas moving in interstate commerce from the Oklahoma Panhandle area under contracts executed during the period January 1959 to September 28, 1960 (the date of the issuance of the Commission's guideline price), and for the period thereafter and here involved was 17.0 cents per Mcf including tax reimbursement. He testified that the contracts in the instant case covered sales of gas from wells located in counties in the Oklahoma Panhandle area. Mr. Zamboni based his opinion upon information which he had compiled from contracts and producer rate schedules relating to certificate applications contained in the files of the Federal Power Commission. His compilation entitled "Rates of Independent Producers Under Certificate Authorization Issued by the Commission, Docket No. G–16878, *et al.*, The Superior Oil Company, *et al.*, Oklahoma Panhandle Area" was received in evidence as Exhibit 1. This exhibit, among other things, contains a list of the four proposed sales in the instant case, including the sales in the nine other dockets in the consolidated proceeding (Schedule 1) and pertinent sales data thereon; similar data on some 616 permanently certificated sales which were negotiated during the period between January 5, 1959, and April 15, 1965, inclusive (Schedule 2); and data on 30 temporarily authorized sales negotiated between September 24, 1959, and April 13, 1964, inclusive (Schedule 3). The exhibit also contains two bar charts consisting of (1) a distribution of certificated initial rates of producer contracts dated January 1959 to September 28, 1960 for the Oklahoma Panhandle area and (2) a distribution of certificated initial rates of producer contracts dated September 28, 1960 and later for the same area.

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[5] See Appendix II, reproduced from the Staff's brief and from the Appendix in the Commission's order of September 15, 1966.

[6] *Ibid.* Unless otherwise indicated all prices herein are for gas measured at a base pressure of 14.65 psia and at a temperature of 60° F.

Mr. Zamboni stated that Schedule 2 of the exhibit listed the sales showing the certificated prices including all adjustments except the upward or downward Btu adjustments in contracts which were accepted for filing by the Commission as of June 30, 1965. He said that the total first month's volumes of gas to be moved in interstate commerce under the 616 permanently certificated sales was approximately 16,500,000 Mcf. He indicated that Schedule 2 included settlements, namely, six sales in the 17.0 cents price group certificated as a result of company wide settlements, and a limited number of sales between a pipe line and its affiliated production company. The latter consisted of five sales by the Anadarko Production Company to the Panhandle Eastern Pipe Line Company in the 16.0 cents price group; two sales by Anadarko to Panhandle in the 16.4 to 16.8 cents price group; 14 sales by Anadarko to Panhandle Eastern, one by the Colorado Oil and Gas Company to Colorado Interstate Gas Company and two sales by the Pioneer Production Corporation to the Northern Natural Gas Company in the 17.0 cents price group.

In arriving at his opinion as to the "in-line" price of natural gas moving in interstate commerce in the Oklahoma Panhandle area which was applicable to the instant sales, the witness indicated that he relied upon Schedule 2 after excluding four sales to the Colorado Interstate Gas Company in Docket Nos. CI61-1180, CI62-217, CI62-388, and CI62-396, and 48 other contracts representing contracts between affiliates and sales certificated as a result of settlements, previously mentioned, and sales from previously dedicated acreage acquired by assignment. The four sales to Colorado were said to be unlike the other sales in Schedule 2 in that they provide that the base price will be adjusted downward on a proportional basis from 1133 Btu to 1,000 Btu per cubic foot. The witness stated that he did not rely on the array of temporarily authorized sales (Schedule 3) or on the proposed sales in the consolidated proceeding (Schedule 1) in reaching his opinion as to an "in-line" price. He was of the opinion that the "in-line" price should be the same even if the certificates of affiliated sales and settlements were included in the sales array and volumes which he had considered.

After putting aside 52 of the 616 permanently certificated sales because some were not comparable, it appears that the witness relied in general on 181 sales in arriving at the "in-line" price for the prepolicy period and 383 sales for the postpolicy period, and more specifically upon 101 sales with estimated first month volumes of 5,162,254 Mcf for the first period, and 292 sales with volumes of 6,550, 184 Mcf for the second period. (Tr. p. 38; Exh. 1, p. 2, 3). The latter sales totalling 393 were made at 17 cents per Mcf. The witness concluded that these sales represented 55.8 percent of the contracts and 80.8 percent of the total volume for the first period, and 76.4 percent of the contracts and 76.4 percent of the volume for the second period. He also concluded that the quality and delivery requirements of the four sales in the instant proceeding are reasonably comparable to the certificated sales at the 17.0 percent level in the Oklahoma Panhandle area.

One of the factors for consideration by the Commission in granting a permanent certificate of convenience and necessity pursuant to Section 7(e) of the Natural Gas Act as interpreted by the courts since the *Catco* decision is whether the "price is right." ***Atlantic Refining Company, et al.* v. *Public Service Commission of New York, et al.***, 360 U.S. 378 (1959). In the case commonly referred to as *Catco* the court said that the Commission in granting a certificate might attach such conditions as it believes necessary "where the proposed price is not in keeping with the public interest because it is out of line" (p. 391), and that the Commission would thereby protect the consuming public "while the justness and reasonableness of the price fixed by the parties is being determined under other sections of the Act," so that the conditions imposed "thus act to hold the line awaiting adjudication of a just and reasonable rate." (p. 392). Although the Supreme Court enjoined the Commission to grant certificates of public convenience and necessity only when, after making other necessary findings, the price of gas is not "out of line", the method of determining whether the price is "in-line" remained to be worked out by the Commission and by the courts in individual cases in later decisions. In *United Gas Improvement Company* v. *Federal Power Commission*, 283 F. 2d 817, 822–823 (CA9–1960), certiorari denied, 365 U.S. 879, the court emphasized that the public has an interest in obtaining reasonable rates and an expeditious dedication of needed new gas reserves, that by holding the price line in certificate cases standby protection is afforded to the public pending normal rate proceedings, and that the existing relevant producer prices paid by the pipeline companies in respect to gas produced in the same or in an analogous area and moved in interstate commerce are important by way of comparison in determining whether a particular price is "in-line." The price, it may be concluded, should be neither higher nor lower than the existing price level at which substantial volumes of gas are contracted for sale and moved in interstate commerce.

In 1965 in *United Gas Improvement Company* v. *Callery Properties, Inc., et al.*, 382 U.S. 223, 227, the Supreme Court clarified the standard to be considered in certificate cases by its holding in stating that "consumer protection is afforded by keeping the "in-line" price at the level where substantial amounts of gas have been certificated to enter the market under other contemporaneous certificates, no longer subject to judicial review or in any way 'suspect'. We believe the Commission can properly conclude under Section 7 that adequate protection to the public interest requires as an interim measure that gas not enter the interstate market at prices higher than existing levels."

In *Sunray DX Oil Company, et al.* v. *Federal Power Commission*, 370 F. 2d 181 (CA10–1966), the court said (pp. 189, 190):

> An in line price is intended to reflect the price at which substantial volumes of gas are currently contracted for sale in interstate commerce.
>
> * * * * * * *
>
> Our view is that the possibility of filing for increased rates under Section 4 does not require that the Commission fix the price in a Section 7 proceeding at a figure lower than that at which substantial volumes of gas are currently contracted for sale in interstate commerce.

Although the price line is intended to reflect current conditions in the industry, *United Gas Improvement Company* v. *Federal Power Commission*, 283 F. 2d 817, 824 (CA9–1960), certiorari denied *sub nom. Superior Oil Company* v. *United Gas Improvement Company*, 365 U.S. 879 (1961), it was held in this case to be an abuse of discretion by the Commission in establishing the price line to rely upon producer prices which are under review in pending court or Commission proceedings. But it is not an abuse of discretion, however, to give consideration to some prices not covered by permanent certificates (temporaries) when no appreciable volumes of gas are moved in interstate commerce under permanent certificates since the Commission has nothing upon which to base a decision as to in-lineness unless it turns to the temporaries. *Sunray DX Oil Company* v. *Federal Power Commission, supra*, p. 189.

In the recent case of *Public Service Commission of the State of New York* v. *Federal Power Commission*, 373 F. 2d 816 (CADC–1967), the court reviewed the earlier cases and the evidence appropriately to be adduced in "in-line" cases as well as the applicable principles and limitations imposed upon the Commission in granting certificates of public convenience and necessity pursuant to Section 7(e) of the Act. The court observed that "Congress created the FPC to protect the consumer from the market place, not simply to reflect it," and that the Commission cannot use prices at which producers and pipelines contract (merely at arm's-length) in setting an "in-line" price. Although the court necessarily dealt with the facts of the case before it and with the arguments of the interested parties, the court indicated that the "in-line" price generally should not be dependent merely on current conditions in the industry and that neither the guideline price nor temporarily certificated prices (when there are permanent certificate prices) provide a reliable basis upon which to predicate an "in-line" price.

In view of the testimony and of Exhibit 1, there is no issue in the instant case as to the time when the sales were made in determining a price level, the relevant geographical area, "suspect" sales, or temporary certificates. The distribution of permanently certificated initial prices for gas sold for resale in interstate commerce in the Oklahoma Panhandle area is as follows (Exh. 1, pp. 1, 2):

| Price ¢ per mcf at 14.65 psia | Number of contracts certificated | Total estimated first month volumes in mcf |
|---|---|---|
| *1959 to 9/28/60* | | |
| 8.0–14.5 | 7 | 21,803 |
| 15.0–15.5 | 21 | 300,360 |
| 16.0 | 30 | 716,471 |
| 16.4–16.8 | 22 | 187,259 |
| 17.0 | 101 | 5,162,254 |
| | 181 | 6,388,147 |
| *9/28/60 to 6/30/65* | | |
| 8.0–14.5 | 15 | 133,780 |
| 15.0–15.5 | 20 | 612,430 |
| 16.0 | 52 | 1,205,355 |
| 16.4–16.8 | 4 | 68,440 |
| 17.0 | 292 | 6,550,184 |
| | 383 | 8,570,189 |
| Total | 564 | 14,958,336 |
| *1959–65* | | |
| 8.0–14.5 | 22 | 155,583 |
| 15.0–15.5 | 41 | 912,790 |
| 16.0 | 82 | 1,921,826 |
| 16.4–16.8 | 26 | 255,699 |
| 17.0 | 393 | 11,712,438 |
| Total | 564 | 14,958,336 |

When all of the foregoing contracts which were certificated at prices of 8.0 cents per Mcf to 17.0 cents per Mcf for the pre-guideline period are considered they average slightly less than 16.5 cents, and the average for the post-guideline period is a little less than 16.7 cents per Mcf. The average for the entire period falls between these two figures at about 16.6 cents per Mcf. But it is apparent, however, that the major concentration of certificated sales occurred at between 16 and 17 cents—nearly 89 percent and that nearly 70 percent occurred at 17 cents per Mcf. When the estimated first month's delivery volumes are considered for the entire period 1959 to 1965 it will be observed, as previously indicated, that the sale of the largest volumes of gas were certificated at initial rates of 17 cents per Mcf, namely 78.3 percent. In the instant case the Apache contract is dated August 10, 1960, the others are dated in 1962, 1964 and 1965. The record shows that substantial volumes of gas were permanently certificated for sale and movement in interstate commerce at 17 cents per Mcf. Accordingly, based on the testimony of the witness who testified at the hearing, and the entire record, the Examiner is of the opinion that the proposed contract prices of 19.5 cents and 21.0 cents per Mcf (Appendix I) are out of line and that the present or future public convenience and necessity requires that the subject sales be conditioned at a price of 17.0 cents per Mcf at 14.65 psia with adjustments.

The Staff's witness who expressed his opinion on the "in-line" price for the sale of natural gas in the Oklahoma Panhandle area also recommended that adjustments be made in respect to the sale to the El Paso Natural Gas Company and the three sales to the Michigan Wisconsin Pipe Line Company. He recommended that for gas actually processed, the Commission allow the Apache Corporation 17.0 cents per Mcf at 14.65 psia measured at the point of delivery and adjusted proportionately for processing shrinkage, plus the revenues received from liquids in accordance with the contract, and that for gas bypassing the plant because of El Paso's election to take in excess of the plant capacity, an adjustment be permitted of 1/100 cents per Mcf for each Btu in excess of 1052 Btu at 14.65 psia, with a maximum adjustment of 0.95 cents per Mcf, in accordance with previously certificated sales to El Paso from the same area and under similar contracts in Opinion Nos. 390 and 390-A (29 FPC 1187; 30 FPC 480).

In respect to the three contracts for sales to the Michigan Wisconsin Pipe Line Company, the witness recommended that upward Btu adjustments be approved only on condition that a proportional downward price adjustment provision from a base no lower than 1000 Btu also be included in accordance with Opinion No. 464 and that the contracts be modified accordingly. (33 FPC 1228, 1237). We adopt these recommendations as amplified in the order herein.

### FINDINGS AND CONCLUSIONS

Upon consideration of the record, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The applicants, Apache Corporation, Van Grisso Oil Company, An-Son Corporation, and Petroleum International, Inc., are "natural-gas companies" within the meaning of the Natural Gas Act and independent producers of natural gas as that term is defined in Section 154.91(a) of the Commission's Regulations, and are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption.

(2) The proposed sales of natural gas by the applicants are required by the public convenience and necessity and certificates therefor should be issued as ordered and conditioned hereinafter.

(3) Each of the applicants is able and willing properly to do the acts and to perform the service proposed in its application in this proceeding and to

conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The prices proposed by the applicants are not in keeping with the public interest because they are "out of line" with the price level at which similar relevant sales are certificated by the Commission as sanctioned by the courts.

(5) The conditions attached to the certificates granted herein are required by the public convenience and necessity.

## ORDER

WHEREFORE, it is ordered, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure that:

(A) A certificate of public convenience and necessity is issued to each of the applicants in Finding (1) for the sale in interstate commerce of natural gas for resale as proposed in its application upon the terms and conditions of this order.

(B) The Apache Corporation shall file with the Federal Power Commission within 30 days from the date of this order a gas rate schedule, or an amendment or supplement to a gas rate schedule now on file with the Commission, providing for an initial price replacing the initial price as proposed for gas sold under its contract in this proceeding, of 17.0 cents per Mcf at 14.65 psia, including reimbursement for taxes, and subject to the following adjustment:

> The initial rate, for gas processed for the removal of liquid hydrocarbons, shall be adjusted by adding thereto Apache's share of revenues received from the liquid hydrocarbons in accordance with the contract revenue-sharing provisions, and such rate shall be further adjusted for processing shrinkage by dividing such shrinkage between the Apache Corporation and the El Paso Natural Gas Company in the same proportions as the division of the revenues from the liquid hydrocarbons. As to gas not processed for the removal of liquid hydrocarbons the rate schedule may provide for an upward adjustment of 1/100 cent per Mcf for each Btu in excess of 1052 Btu per cubic foot of gas, not to exceed 0.95 cents per Mcf at 14.65 psia.

(C) Each of the applicants, the Van Grisso Oil Company, the An-Son Corporation, and Petroleum International, Inc., shall file with the Federal Power Commission within 30 days of the date of this order an amendment to its rate schedule now filed with the Commission, providing for an initial wellhead price of 17.0 cents per Mcf at 14.65 psia, including tax reimbursement, for gas sold under its contract in this proceeding replacing the initial rate as proposed. The initial price shall be subject to upward adjustment for gas containing more than 1000 Btu per cubic foot as proposed in the contract, provided that the applicant's rate schedule shall also provide for a downward adjustment in price for gas containing less than 1000 Btu per cubic foot, the downward adjustment to be .017 cents per Mcf for each Btu below 1000 Btu per cubic foot.

(D) Each applicant (B) and (C) shall file with the Commission within 30 days after the date of this order a gas rate schedule, or amendment or a supplement to a gas rate schedule now on file with the Commission, complying with the conditions prescribed herein.

(E) The FPC gas rate schedules relating to the four sales herein shall provide that the buyers may receive, at no additional charge per Mcf, gas paid for but not taken at any time in a period of at least five years immediately following payments for such gas not taken, subject to contract provisions to protect against drainage. If the contract terminates before the end of the minimum five year make-up period, a shorter make-up period consistent with the time remaining under the contract will be permitted. (Order No. 334, January 18, 1967; as modified by Order No. 334–A, March 21, 1967, 37 FPC 110, 587).

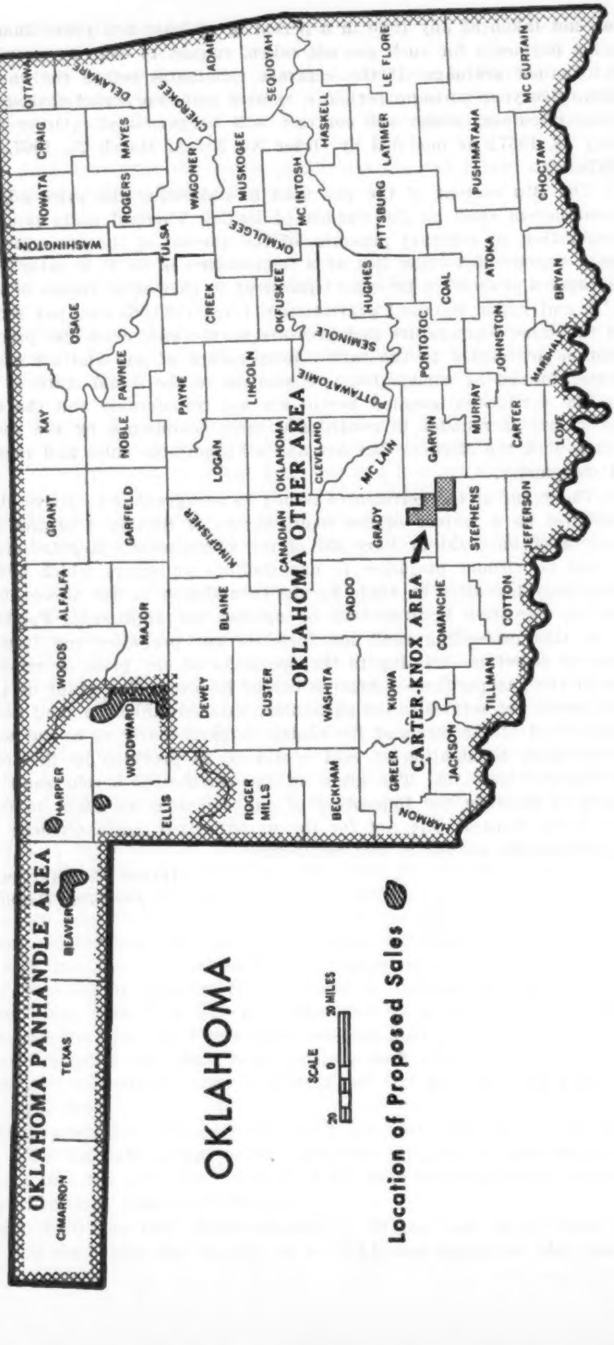
(F) The Btu content of the gas used in computing the price adjustment approved herein shall be the number of British Thermal units produced by the combustion, at constant pressure, of the amount of the gas which would occupy a volume of 1 cubic foot at a temperature of 60°F. if saturated with water vapor and under a pressure equivalent to that of 30 inches of mercury at 32°F. and under standard gravitational force (980.665 c.m. per sec.) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of gas and air and when the water formed by combustion is condensed to the liquid state.

(G) The certificates granted herein are not transferable and the exercise of any rights thereunder is conditioned upon compliance by the respective recipients with the Natural Gas Act and all applicable rules and regulations issued thereunder.

(H) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates herein for service to the particular customers involved shall not imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. The grant of the certificates herein shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificates.

HARRY C. SHRIVER,
*Presiding Examiner.*

## APPENDIX I


OKLAHOMA
SCALE
20 0 20 MILES
Location of Proposed Sales
OKLAHOMA PANHANDLE AREA
OKLAHOMA OTHER AREA
CARTER-KNOX AREA
CIMARRON
TEXAS
BEAVER
HARPER
WOODS
ALFALFA
GRANT
KAY
OSAGE
WASHINGTON
NOWATA
CRAIG
OTTAWA
DELAWARE
MAYES
ROGERS
TULSA
PAWNEE
NOBLE
GARFIELD
MAJOR
WOODWARD
ELLIS
DEWEY
BLAINE
KINGFISHER
LOGAN
PAYNE
CREEK
WAGONER
CHEROKEE
ADAIR
SEQUOYAH
MUSKOGEE
OKMULGEE
OKFUSKEE
LINCOLN
OKLAHOMA
CANADIAN
CUSTER
ROGER MILLS
BECKHAM
WASHITA
CADDO
GRADY
MC CLAIN
CLEVELAND
POTTAWATOMIE
SEMINOLE
HUGHES
MC INTOSH
HASKELL
LE FLORE
LATIMER
PITTSBURG
COAL
PONTOTOC
GARVIN
MURRAY
JOHNSTON
ATOKA
PUSHMATAHA
MC CURTAIN
CHOCTAW
BRYAN
MARSHALL
LOVE
CARTER
STEPHENS
JEFFERSON
COTTON
COMANCHE
TILLMAN
KIOWA
JACKSON
GREER
HARMON

## APPENDIX II

| Docket Nos. | Applicant | Purchaser and producing area | Proposed initial price ¢ per Mcf | Price authorized by temporary certificate ¢ per Mcf | Description and date of instrument |
|---|---|---|---|---|---|
| CI61-336 | Apache Corp., Tulsa, Okla. | El Paso Natural Gas Co., Mocane Laverne Field, Beaver County, Okla., Panhandle Area. | [3] 21.0 | [4] 17.0 | Contract (Contract Date 8-10-60) FPC Gas RS No. 22. |
| CI63-59 | Van Grisso Oil Co., Oklahoma City. | Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Okla., Panhandle Area. | [1] 19.5 | [11] 17.0 | Contract as supplemented (Contract date 1-26-59) FPC Gas RS No. 4, Sup. No. 4. |
| CI63-370 | An-Son Corp., Oklahoma City. | Michigan Wisconsin Pipe Line Co., Woodward Area, Woodward County, Okla., Panhandle Area. | [1] [7] 19.5 | [9] [10] [11] 17.0 | Contract (Contract date 7-26-62) FPC Gas RS No. 1. |
| CI64-520 | Petroleum International, Inc.,[12] Tulsa, Okla. | Michigan Wisconsin Pipe Line Co., N.W. Quinlan Field, Woodward County, Okla., Panhandle Area. | [1] [7] 19.5 | [9] [10] [11] 17.0 | Contract as supplemented (Contract date 8-28-63) FPC Gas RS No. 1, Sup. No. 2. |

---

[1] Subject to upward Btu adjustment.

[3] Subject to additional reimbursement of 25% of liquid products with a minimum guarantee of 1.0¢/Mcf.

[4] Including liquefiable hydrocarbons.

[7] Subject to reimbursement of 100% of existing Oklahoma taxes.

[9] Upward Btu adjustment subject to R-200 prospectively.

[10] Includes tax reimbursement.

[11] Subject to upward or downward Btu adjustment (downward applies during period of temporary authorization only).

[12] Initial application involves acreage located in Oklahoma other area only.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64-5; ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP65-340

### ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 22, 1967)

On February 27, 1967, Texas Eastern Transmission Corporation (Texas Eastern), filed in Docket No. CP64-5 a petition to amend the order issued by the Commission December 19, 1963, 30 FPC 1559, as amended October 28, 1964, 32 FPC 1229, April 5, 1965, 33 FPC 699, August 24, 1965, 34 FPC 572, November 4, 1966, and December 30, 1966, 36 FPC 826, 1171, by authorizing Texas Eastern to sell additional quantities of natural gas to Algonquin Gas Transmission Company (Algonquin), all as more fully set forth in the petition to amend filed in Docket No. CP64-5.

The order of December 19, 1963 as amended to date authorized Texas Eastern to construct and operate additional facilities to provide an additional 563,126 Mcf of natural gas of peak capacity over a four-year period beginning in 1964 to enable Texas Eastern to meet the increased requirements of its customers for natural gas during the four-year period beginning in November, 1964.

Texas Eastern seeks authorization here to sell to Algonquin an additional 3,838 Mcf per day of natural gas under its annual firm gas rate schedules and an additional 2,635 Mcf of natural gas per day under its Winter Service Rate Schedule. The additional annual firm sales are to begin on November 1, 1967 and the additional Winter Service sales are to begin on November 16, 1967.

Texas Eastern states that the additional quantities of natural gas proposed to be sold to Algonquin are needed by the latter to meet its natural gas requirements beginning with the 1967-68 winter heating season. Texas Eastern also states that the additional proposed sales will not affect any service now being rendered by it.

On February 27, 1967, Algonquin filed in Docket No. CP65-340 a petition to amend the order issued by the Commission August 24, 1965, by advancing the date for construction and operation of certain natural gas facilities authorized thereby and by changing the volumes of natural gas authorized for delivery by Algonquin to certain of its resale customers, commencing in November, 1967, all as more fully set forth in the petition to amend.

The above-mentioned order authorized Algonquin to construct and operate certain natural gas facilities over a four-year period, and to sell and deliver certain quantities of natural gas to its customers.

Specifically, Algonquin now seeks authorization to construct and operate in 1967, some of the facilities originally authorized to be constructed and placed in operation in 1968, said facilities being as follows:

(1) 4.6 miles of 20-inch pipeline loop between 1 mile South of valve G-1-6, Berkley, Massachusetts, and valve G-1-7, Freetown, Massachusetts, and

(2) 7.6 miles of 16-inch pipeline loop between valve G-5-1 Attleboro, Massachusetts and valve G-5-2A, Seekonk, Massachusetts.

Algonquin seeks authorization to place the above listed facilities in operation commencing November 1, 1967.

Algonquin also seeks authorization to change the quantities of natural gas to be delivered to certain of its resale customers as follows:

| Customer | Maximum daily quantity increase (Mcf) | Maximum daily winter quantity increase (Mcf) |
|---|---|---|
| Bristol and Warren Gas Co | 100 | |
| Boston Gas Co | | [1] (6,000) |
| Brockton Taunton Gas Co | 500 | 50 |
| The Connecticut Gas Co | | 3,000 |
| The Newport Gas Co | 500 | |
| North Attleboro Gas Co | 40 | 15 |
| Providence Gas Co | 2,700 | 6,200 |
| Total | 3,840 | 3,265 |

[1] Decrease.

Algonquin states that Texas Eastern has agreed to sell and Algonquin has agreed to buy the above-listed additional quantities of natural gas with the Maximum Daily increase commencing November 1, 1967, and the Maximum Daily Winter increase commencing November 16, 1967. Algonquin states that the proposed facilities are currently needed to meet the present requirements of its customers as are the additional quantities of natural gas.

Due notice of the filing of the petitions to amend and opportunity for hearing thereon has been given by publication in the Federal Register on March 10, 1967 (32 F.R. 3952) in Docket No. CP64–5 and on March 16, 1967 (32 F.R. 4146) in Docket No. CP65–340. No protest, petition to intervene or notice of intervention has been filed herein.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's orders issued December 19, 1963, as amended in Docket No. CP64–5 and August 24, 1965 in Docket No. CP65–340 be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued December 19, 1963, as amended, in Docket No. CP64–5 is further amended so as to authorize Texas Eastern to increase its sales and deliveries of natural gas to Algonquin by 6,473 Mcf daily; and the Commission order issued August 24, 1965 in Docket No. CP65–340 is amended so as to authorize Algonquin to advance by one year the date for constructing and operating certain of the facilities originally authorized for 1968 and to sell additional volumes of natural gas (7105 Mcf) daily to the seven existing resale customers as hereinbefore described and as more fully described in the application.

(B) In all other respects said orders shall remain in full force and effect.

(C) The amendments authorized by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in Section 157.20 in paragraphs (c)(1), (c)(3), (c)(4), (f) and (g) of such Regulations and the filing of revised service agreements reflecting the change in volumes authorized.

(D) In all other respects the orders heretofore issued in these Docket Nos. CP64–5 and CP65–340 remain unchanged.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60-14

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 22, 1967)

On March 23, 1967, United Gas Pipe Line Company (Petitioner) filed in Docket No. CP60-14 a petition to amend the order issued by the Commission on August 11, 1960, 24 FPC 216, as amended December 17, 1962, 28 FPC 1059, and June 25, 1964, 31 FPC 1586, by authorizing Petitioner to increase firm gas deliveries of natural gas to Escambia Chemical Corporation (Escambia) to 36,000 Mcf per day, all as more fully set forth in the petition to amend.

The order issued August 11, 1960, as amended, authorized Petitioner to construct and operate certain natural gas facilities and to deliver volumes of natural gas to, among others, Escambia in volumes not to exceed 30,500 Mcf of natural gas per day.

Petitioner now seeks authorization to increase the firm deliveries of natural gas to Escambia from the previous limit of 30,500 Mcf of natural gas per day to a total maximum daily delivery of 36,000 Mcf of natural gas. Petitioner states that it has entered into an Amendatory Agreement with Escambia dated March 8, 1967, for the additional quantities of natural gas for which authorization is being sought in the instant filing. Petitioner advises that no new facilities will be necessary to deliver the increased quantity of natural gas.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on April 5, 1967 (32 F.R. 5595). No protest or petition to intervene has been filed concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 11, 1960, in Docket No. CP60-14 as amended, be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued August 11, 1960, in Docket No. CP60-14 as amended, is further amended to authorize Petitioner to increase the firm deliveries of natural gas to Escambia Chemical Corporation in Escambia County, Florida, from 30,500 Mcf daily to 36,000 Mcf daily as requested by Petitioner in the subject petition to amend.

(B) The amended certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increase in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ARKANSAS OKLAHOMA GAS CORPORATION (FORMERLY FORT SMITH GAS CORPORATION), DOCKET NO. G-2191, ET AL.

### ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDING ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 23, 1967)

On January 5, 1967, Fort Smith Gas Corporation filed a notice of change in name (dated December 29, 1966) to advise the Commission that its corporate name will have been changed to Arkansas Oklahoma Gas Corporation effective January 1, 1967. There is no change in corporate structure, management, facilities or service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been received.

*The Commission orders:*

(A) The orders issuing certificates of public convenience and necessity to Fort Smith Gas Corporation in Docket Nos. G-2191, G-2333, CP63-2 and CP65-411 are amended by changing the name of the certificate holder to Arkansas Oklahoma Gas Corporation, and in all other respects said orders shall remain in full force and effect.

(B) The order issued in Docket No. CP62-101 directing Mississippi River Transmission Corporation to connect its facilities with and to sell natural gas to Fort Smith Gas Corporation is amended by changing the name of the recipient of the gas to Arkansas Oklahoma Gas Corporation, and in all other respects said order shall remain in full force and effect.

(C) The name, Arkansas Oklahoma Gas Corporation, is substituted for that of Fort Smith Gas Corporation in any and all other Commission matters in which the name Fort Smith Gas Corporation appears.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITY OF EUGENE, OREGON, BY AND THROUGH ITS EUGENE WATER & ELECTRIC BOARD, PROJECT NO. 2510

### ORDER ISSUING LICENSE (MAJOR)

(Issued May 23, 1967)

Application was filed on March 29, 1965, and supplemented on August 4, 1965, by City of Eugene, Oregon (Applicant), by and through its Eugene Water & Electric Board, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2510, known as the Walterville Project, located on the McKenzie River in Lane County, Oregon, in the vicinity of Walterville. No lands of the United States are affected by the project.

Construction of the project started in 1909 and was completed in 1911 with a hydroelectric installation of two units totaling 1,500 kilowatts of capacity. Installation of a third unit in 1924 increased the capacity to 3,050 kilowatts. Reconstruction of the project commenced in September, 1948, causing the shut down of the power plant in April of 1949. Under the reconstruction the project canal was widened and deepened, an 8,000 kilowatt generating unit was installed and placed in operation by December 3, 1949. Construction of off-stream storage facilities, started in 1951, was completed in 1952. The off-stream facilities consists of a reservoir of 345 acre feet and 4 pumps with a combined capacity of about 300 cfs.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation insofar as the interests of navigation are concerned.

The Department of the Interior in reporting on the application, recommended for inclusion in any license for the project, terms and conditions in the interest of fish and wildlife and recreation as set forth in attached Form L-3, and in addition thereto two special conditions in the interests of fish and wildlife substantially as set forth in license Articles 33 and 34.

The Department of Health, Education, and Welfare has reported that the project has no adverse effects on water supply, water pollution control, or vector control, and none is anticipated.

Exhibit R filed as part of the application, consisting of a one-page narrative statement, a one page addendum, and a drawing (FPC No. 2510-14) entitled "Project Recreation Situation", shows only existing public access ways and recreational facilities at the project, and no future plans for recreational development. The project is without a reservoir. We are approving the exhibit as a part of this license to the extent that it shows such existing recreational use of the project. License Articles 18 and 19 provide for additional recreational development of the project consistent with future recreational needs and other project purposes.

Pursuant to petition therefor, the Commission, by its order issued November 10, 1966, permitted the State of Oregon, through its State Game Commission and its Fish Commission, to intervene in this proceeding. The Interveners' interests are associated with fish and wildlife protection and seek a permanent arrangement for such protection through license terms and conditions to insure minimum McKenzie River flows for fish passage around the project powerhouse, and unrestricted freedom of game animal movement substantially as provided for in license Articles 33 and 34.

The McKenzie River originates on the western slope of the Cascade Mountains and flows generally west a distance of 86 miles to its confluence with the Willamette River. The fall of the McKenzie is about 10 feet per mile from river mile 40 to its mouth. The Walterville Project is located at river mile 20.9. There is ample historical evidence of the extensive use of the McKenzie river towards the end of the 19th century for the annual floating of great quantities of logs from at least mile 40 to the Coburg sawmill 6 miles above its mouth, and down the Willamette to sawmills on that river located at Oregon City, Salem and Newburg.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1949, since neither a declaration of intention nor a timely application for license was filed with respect to the 1949 reconstruction, and a termination date of December 31, 1993.

*The Commission finds:*

(1) Walterville Project No. 2510 is located on a navigable reach of the McKenzie River.

(2) Applicant is a municipality organized under the laws of the State of Oregon, and has submitted satisfactory evidence of compliance with the re-

quirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. Except for the above-mentioned petition to intervene, no protests or other petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed. the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 10,700 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

*The Commission orders:*

(A) This license is hereby issued to the City of Eugene, Oregon, by and through its Eugene Water & Electric Board (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period effective as of January 1, 1949 and terminating December 31, 1993, for the continued operation and maintenance of Walterville Project No. 2510, located on the McKenzie River, in Lane County, Oregon, and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The Walterville Project consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2510–1) General Map

Exhibit K: (FPC No. 2510–2) Project Area Map

(ii) the project works are as follows: (1) a 4 mile long cut and fill unlined canal (2575 cfs capacity), controlled by a headworks structure containing two 14 x 20 foot tainter gates, terminating at the plant forebay, (2) a pump storage pond on the right bank at the canal, 3 miles below the headworks structure, with a capacity of 345 acre-feet and a surface area of 65 acre, filled by use of four 33,000 gpm (300 cfs total) pumps and drawn down through two 4 x 20 foot radial gates, (3) a forebay, forebay headworks containing a 20 x 22 foot radial gate controlling flow to the powerhouse through a 16.5 x 16.5 foot penstock 130 feet long, and a siphon bypass, (4) an automated powerhouse containing an 8000 kilowatt generating unit, (5) a 12/66 kv substation and 12 kv bus connected to the generator via an underground cable, and two taps to the Leaburg-Currin line, (C) and appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

| Exhibit L, sheet | FPC No. 2510 | Showing |
|---|---|---|
| 1 of 11 | -3 | General Plan. |
| 2 of 11 | -4 | Powerhouse Superstructure. |
| 3 of 11 | -5 | Powerhouse Floor Plan. |
| 4 of 11 | -6 | Powerhouse Transverse Section. |
| 5 of 11 | -7 | Powerhouse Longitudinal Section. |
| 6 of 11 | -8 | Penstock Gate. |
| 7 of 11 | -9 | Penstock Plan and Section. |
| 8 of 11 | -10 | Pump Storage Structure Plan. |
| 9 of 11 | -11 | Pump Storage Structure Section. |
| 10 of 11 | -12 | Headworks Map. |
| 11 of 11 | -13 | Headworks Plan. |

*Exhibit M:* consisting of a single typewritten page entitled, "General Description of Equipment", filed in the Commission on March 29, 1965.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised September 1, 1966) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (36 FPC 971), which terms and conditions, designated as Articles 1 through 31, are attached hereto and made a part hereof, except Articles 7 and 8 thereof; and subject to the following special conditions set forth herein as additional articles:

*Article 32.* The Licensee shall pay to the United States the following annual charge, effective as of January 1, 1949:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations in effect from time to time. The authorized installed capacity for such purpose is 10,700 horsepower.

*Article 33.* The Licensee shall maintain flows in the McKenzie River past the Walterville Canal not less than those in the following schedule established by the agreement of January 18, 1954, by the Eugene Water and Electric Board, Fish Commission of Oregon, and Oregon State Game Commission:

| Period | Second-feet |
|---|---|
| Jan. 1 through Apr. 30 | 350 |
| May 1 through May 31 | 1,000 |
| June 1 through June 30 | 800 |
| July 1 through July 15 | 750 |
| July 16 through Aug. 31 | 500 |
| Sept. 1 through Sept. 30 | 425 |
| Oct. 1 through Dec. 31 | 350 |

*Article 34.* The Licensee shall construct, maintain, and operate, or arrange for the construction, maintenance, and operation of permanent fish passage and game protective facilities at the project, the specifications for which shall be determined cooperatively by the Licensee, Fish Commission of Oregon, Oregon State Game Commission, and the U.S. Fish and Wildlife Service. In the event the Licensee and the agencies named herein fail to agree on the design for the fish passage and protective facilities, such facilities may be prescribed by the Commission as provided by Article 16 of attached Form L–3.

(D) The aforementioned Exhibit R is hereby approved as part of this license to the extent that it shows existing recreational use of the project.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MIDHURST OIL CORPORATION, DOCKET NOS. G–18150, RI62–414 AND LONNIE D. HARRISON, TRUSTEE (OPERATOR), ET AL., DOCKET NO. RI64–167

### ORDER AMENDING ORDER ACCEPTING OFFER OF SETTLEMENT

(Issued May 23, 1967)

By order issued June 21, 1965, 33 FPC 1274, in the above-entitled proceedings, the Commission approved a settlement proposal filed by Midhurst Oil Corporation (Midhurst) covering settlement rates under two of Midhurst's rate schedules, one of which included Midhurst's FPC Gas Rate Schedule No. 12 which was involved in Docket No. RI64–167. It has come to our attention that by order issued September 16, 1964, in Docket No. G–7258, *et al.*, Lonnie D. Harrison, Trustee (Operator), *et al.* (Harrison) was named co-respondent in Docket No. RI64–167 and permitted to make sales of natural gas to Texas Eastern Transmission Corporation under a contract previously designated Midhurst Oil Corporation (Operator), *et al.*, FPC Gas Rate Schedule No. 18. The settlement order issued June 21, 1965 did not pertain to Harrison.

In view of the above, we think it appropriate to amend our settlement order of June 21, 1965, so as to reinstate the suspension proceeding in Docket No. RI64–167 insofar as said proceeding pertains to sales pursuant to Harrison's FPC Gas Rate Schedule No. 1 (Formerly Midhurst's Rate Schedule No. 18), and reconsolidate said proceeding in the Texas Gulf Coast Proceeding, Docket No. AR64–2.

*The Commission orders:*

For the reasons set forth above, our order of June 21, 1965 is modified so as to reinstate the suspension proceeding in Docket No. RI64–167 insofar as said proceeding pertains to Lonnie D. Harrison, Trustee (Operator), *et al.*, and to reconsolidate said proceeding in the Texas Gulf Coast Proceeding, Docket No. AR64–2.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MONONGAHELA POWER COMPANY, PROJECT NO. 2477

### ORDER EXTENDING PERIOD OF PRELIMINARY PERMIT

(Issued May 23, 1967)

Application was filed on April 4, 1967 by Monongahela Power Company, permittee for proposed Project No. 2477, for a six-month extension of the period of the permit. The permit was issued for a period of 24 months, effective as of August 1, 1965.

Under its permit, the permittee has been engaged in studies and other preparatory work in connection with installing pumped storage hydroelectric facilities at the U.S. Corps of Engineers' Rowlesburg Reservoir proposed for construction on the Cheat River in Preston County, West Virginia, near the Town of Rowlesburg.

In support of its application, the permittee advises that on June 17, 1966 the Corps advised that it had decided to change its December 1963 plans which had proposed a rock fill dam for its Rowlesburg Reservoir with a separate spillway and outlet works into Fill Hollow, to a concrete gravity dam with spillway and outlet works located in the dam structure. This change in design effected a necessary change in the permittee's plans for construction which caused a four-month delay in the permittee's studies. The permittee advises it plans to proceed immediately with preparation of an application for license for its proposed hydroelectric facilities at the Corps' reservoir, but that a six-month extension of the period of its permit is necessary to complete the application.

*The Commission finds:*

It is appropriate for the purposes of the Federal Power Act to grant the requested extension of the period of the permit.

*The Commission orders:*

The period of the permit for proposed Project No. 2477 is hereby extended through January 31, 1968.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## THE OHIO FUEL GAS COMPANY, DOCKET NO. CP67–224

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 23, 1967)

On February 9, 1967, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP67–224 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant proposes to construct approximately 8.5 miles of 12-inch transmission pipeline in Stark and Columbiana Counties, Ohio, replacing a like amount of 8-inch pipeline in Applicant's Line V. Construction of these facilities will complete the replacement with 12-inch pipeline of Applicant's Line V which extends between its Holmes Storage Pool and its interconnection with its affiliated supplier, The Manufacturers Light and Heat Company (Manufacturers), at Dungannon, Columbiana County, Ohio.

The 8-inch pipeline sections which are to be replaced will be salvaged and sold as used pipe.

The age and condition of the remaining 8-inch pipeline sections in Line V limit maximum operating pressure to approximately 270 psig. Installation of the replacement facilities will permit operation of Line V at a pressure of 500 psig thereby increasing its capacity.

The total estimated cost of Applicant's proposed construction is $430,000, which cost is proposed to be financed through the issuance and sale of promissory notes or common stock to Applicant's parent company, The Columbia Gas System, Inc. Applicant estimates a salvage recovery of approximately $35,000 from the sale of the replaced 8-inch pipeline.

After due notice, no petition to intervene, notice of intervention or protest has been filed.

At a hearing held on May 18, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G-371 (4 FPC 1033).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(7) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, The Ohio Fuel Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within one year from the date of this order.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## GEORGIA POWER COMPANY, PROJECT NO. 2354

### ORDER GRANTING REHEARING FOR PURPOSE OF GIVING FURTHER CONSIDERATION

(Issued May 26, 1967)

Application for rehearing of the Commission's Opinion No. 518 and order issued March 29, 1967, 37 FPC 620, was filed on April 27, 1967, by the Georgia Power Company, applicant for a license under the Federal Power Act for constructed Project No. 2354, known as the North Georgia Development.

*The Commission finds:*

In order to afford additional time for consideration of the matters set forth in Georgia Power's application for rehearing, it is appropriate and proper in the administration of the Federal Power Act that the rehearing requested by the applicant be granted.

*The Commission orders:*

The rehearing sought by the Georgia Power Company is granted for the purpose of further considering the issues raised in its application.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## IOWA PUBLIC SERVICE COMPANY, DOCKET NO. E-7343

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued May 26, 1967)

Iowa Public Service Company (Applicant) filed an application on March 8, 1967, for an order, pursuant to Section 203 of the Federal Power Act, authorizing it to acquire certain electric distribution facilities from the Farmers Electric Company (Farmers).

Applicant is incorporated under the laws of the State of Iowa with its principal place of business office at Sioux City, Iowa, and is engaged primarily in the generation, purchase, transmission, sale at wholesale and distribution of electric energy in 30 counties in northwest and north central Iowa and three counties in eastern South Dakota. Applicant is also engaged in natural gas distribution and in heating and water utility business.

Farmers is a small privately-owned electric utility which operates a small distribution system near the Town of Hudson, Black Hawk County, Iowa. It has no generating facilities and purchases energy to meet its requirements from Applicant. As of the end of 1965, Farmers was serving 106 farm customers and 86 non-farm residential customers. During 1965, these customers purchased 1,748,636 kwh.

Under an agreement entered into February 6, 1967, Applicant agreed to purchase Farmers' distribution lines in place and its inventory of materials and supplies for a cash consideration of $114,000. Application states that the consideration was arrived at by negotiations with Farmers. In addition, it will pay a total of about $50,000 to Farmers' customers for their transformers, meters, yard poles and services. Farmers distribution plant has an estimated original cost depreciated of $42,650 and its materials and supplies have an estimated cost of $5,290, for total net assets of $47,940. The Applicant's payment of $114,000 for net assets of $47,940, will result in the creation of an acquisition adjustment of $66,060. The Applicant proposes to eliminate the acquisition adjustment by a debit to Account 435, Miscellaneous Debits to Surplus.

The application states that Farmers has served farms and non-farm residences in the rural area around the Town of Hudson and southwest of Waterloo, Iowa for a number of years. Recently, a large portion of Farmers' service area was annexed into the corporate limits of the City of Waterloo and a portion into the corporate limits of the Town of Hudson. About one-third of Farmers service area was affected by these annexations.

Applicant further points out that the Iowa Commerce Commission has adopted rules and regulations governing levels of construction, operation and maintenance of electric facilities and has cited Farmers for a number of deficiencies. Farmers has no full-time employees and no maintenance equipment nor does it have the resources to immediately correct the deficiencies to expand its system to meet the growth that is anticipated in its service area.

Applicant states that it has equipment and personnel located at its East Division headquarters in Waterloo and can maintain the facilities to the specifications of the Iowa Commerce Commission. Thus, the maintenance equipment, personnel and facilities are close at hand and can provide the type of service that is in the best interest of the public, and, particularly, the customers of Farmers. Furthermore, it also has sufficient generating capacity to continue to provide for growth in the additional service area.

Farmers has two rate schedules, one for "shareholders", the other a considerable higher rate serving 29 "renters". After the transaction is approved the 29 "renter" customers would be served under Applicant's residential rate which is lower. Decreases in charges, on a monthly basis, would range from $.90 (27%) to $9.21 (24%). The Farmers customers now being served under the "shareholder" rates face increased charges. Fifteen of these customers on newly constructed facilities would have an immediate increase ranging from $.86 (14%) at 200 kwh monthly consumption to $2.36 (12.9%) at 800 kwh monthly consumption. The remainder of Farmers' customers would not have their rates changed until the Farmers' system is rehabilitated to meet the Iowa Commission standards which is not expected to be completed for several years.

Written notice of the application has been given to the Iowa State Commerce Commission and to the South Dakota Public Utilities Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on March 25, 1967 (32 F.R. 4554), stating that any person desiring to be heard or to make any protest with reference to the application should on or before April 10, 1967, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received. By order issued March 7, 1967, the Iowa State Commerce Commission approved the transaction.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued August 22, 1963, *Iowa Public Service Company*, Docket No. E-7115 (30 FPC 536).

(2) By the proposed acquisition as described above, Applicant will acquire and merge or consolidate its facilities subject to the jurisdiction of the Commission with facilities of Farmers, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

*The Commission orders:*

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above, as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., DOCKET NO. CP67-211 (PHASE I)

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 26, 1967)

On January 25, 1967, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant) filed in Docket No. CP67-211 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to increase its system annual average day delivery capacity and to sell and deliver additional volumes of natural gas to meet the increased requirements of existing customers beginning with the winter season of 1967-68, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate approximately 63.4 miles of 30-inch loop pipelines in New York; 1.8 miles of 24-inch pipeline in Pennsylvania; 10.8 miles of 6-inch, 8-inch, and 12-inch loop pipeline and pipeline replacement on delivery laterals in New England; 12.7 miles of 12-inch gas supply gathering lines in the offshore area of Louisiana; and a 5,800 horsepower addition in its existing Compressor Station No. 507F in Louisiana.

The mainline facilities proposed are to be utilized for the purpose of increasing Applicant's system peak day capability east of its New York and Pennsylvania storage fields. Applicant proposes no increase in its system-wide capacity, but will render the increased service, on a design day basis, from unallocated capacity generated on its system through the facilities authorized by the Commission in orders issued in Docket Nos. CP66-180 and CP66-303 on May 10, 1966, 35 FPC 715, and July 20, 1966, 36 FPC 137, respectively.

The net increased natural gas service proposed to be rendered through the operation of the subject facilities is summarized as follows:

| Customer class | Increased peak day quantity | Related design day capacity |
|---|---|---|
| General service | 42,602 | 23,071 |
| Contract demand | 38,040 | 38,040 |
| Nonjurisdictional | (14,087) | (14,087) |
| Subtotal | 66,555 | 47,024 |
| Storage service | 7,000 | ---------- |
| Net increase | 73,555 | 47,024 |

Said increased natural gas service will be rendered pursuant to Applicant's existing FPC Tariff and Rate Schedules.

The total estimated direct cost of Applicant's proposed facilities is $13,626,-500. The project will be financed initially with existing revolving credit funds.

Ultimately, the cost will be included as a part of permanent financing by issuance of pipeline bonds, debentures, or other conventional means.

After due notice The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc., filed petitions for leave to intervene to protect their interests only in the event formal hearings were held in this proceeding. On March 24, 1967, Carlisle-Concord Neighborhood Association and the Town of Carlisle, Massachusetts, filed motions to intervene late and petitions for leave to intervene opposing the construction and operation of proposed facilities not involved herein. On March 27, 1967, Town of Sudbury, Massachusetts, filed a similar motion to intervene late and a petition to intervene also relative to facilities not involved herein.

By order of the Commission issued concurrently herewith, hearings have been scheduled and all the above-named petitioners have been permitted to become interveners with respect to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene. The portion of the subject application for which hearings have been scheduled is that related only to matters involving the construction and operation of facilities, comprising some 35 miles of 24-inch loop pipeline proposed to be constructed between Hopkinton and Dracut, Massachusetts, not authorized herein. That portion of the application has been denominated Phase II.

No other petitions to intervene, notices of intervention or protests have been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e) (f) and (g) of Section 157.20 of said Regulations.

(5) The certificate hereinafter issued should be conditioned upon Applicant's filing with the Commission, in accordance with the Commission's Regulations under the Natural Gas Act, appropriate revised service agreements

with those customers to whom increased natural gas service will be rendered pursuant to the authorization contained herein.

(6) The certification hereinafter issued should not be implied or construed as approval of Applicant's petition to amend filed on March 7, 1967, in Docket No. CP66-180 seeking to amend further the order issued in said docket on May 10, 1966, and amended on December 28, 1966.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of the facilities and the transportation and sale of natural gas as hereinbefore described and as more fully set forth in the application in this proceeding, except those comprising some 35 miles of 24-inch loop pipeline proposed to be constructed between Hopkinton and Dracut, Massachusetts, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within one year from the date of this order.

(D) The certificate issued by paragraph (A) above is conditioned upon Applicant's filing with the Commission, in accordance with the Commission's Regulations under the Natural Gas Act, appropriate revised service agreements with those customers to whom increased natural gas service will be rendered pursuant to the authorization contained therein.

(E) The certificate issued by paragraph (A) above shall not be implied or construed as approval of Applicant's petition to amend filed on March 7, 1967, in Docket No. CP66-180 seeking to amend further the order issued in said docket May 10, 1966, and amended on December 28, 1966.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNION ELECTRIC COMPANY AND IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7324

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued May 26, 1967)

Union Electric Company (Union Electric) filed an application on November 10, 1966, and supplements in letter form on February 16 and March 29, 1967, and Iowa Southern Utilities Company (Iowa Southern) filed a Certificate of Concurrence on December 1, 1966, and supplements in letter form on February 17 and May 8, 1967, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the sale of certain electric transmission facilities by Union Electric and the acquisition of the same facilities by Iowa Southern.

Union Electric is incorporated in the State of Missouri and is qualified to do business in the States of Missouri, Illinois and Iowa. It is engaged primarily in the generation, transmission, distribution and sale of electric energy in a service area that includes the City of St. Louis and 10 counties in Missouri; 5 counties in Illinois and 4 counties in Iowa.

Iowa Southern is incorporated under the laws of the State of Delaware and is qualified to do business in the State of Iowa. It is engaged primarily in the generation, purchase, transmission and sale of electric energy in 24 counties in south central and southeast Iowa.

The facilities involved in this transaction consist of a 2.46 mile section of a double-circuit 69 kv transmission line extending from Union's Lee substation to Iowa Southern's Agency Street substation and metering equipment located at the Agency Street substation in Burlington, Iowa. The amount of $60,677 which Iowa Southern has agreed to pay for the facilities was arrived at by negotiation. The line section is part of a 17 mile, 69 kv line extending from Union's Lee substation to Iowa Southern's Agency Street substation in Burlington, Iowa. The line has been used for a number of years to deliver energy to an R.E.A. electric cooperative and Iowa Southern under wholesale agreements.

When Iowa Southern's 212 mw steam-electric generating plant at Burlington, Iowa is completed, the company will no longer need to purchase energy from Union as a wholesale customer and at times will have excess capacity and energy for sale. The two systems have therefore terminated the wholesale agreement as of December 31, 1966, and entered into an interchange agreement. This agreement provides, among other things, for a point of interconnection at the southern terminus of the facilities to be sold by Union. The facilities are located within Iowa Southern's service area and are not now used by Union to supply electric energy to any other customers.

The facilities in question, with other facilities Iowa Southern is acquiring and building, will be used in coordination between the Iowa Pool, which includes Iowa Southern, and the Illinois-Missouri Pool which includes Union. The facilities will also be useful to Iowa Southern in serving its Burlington area from the new Burlington plant.

The consideration for the transfer of the facilities will be $60,677. The facilities have an original cost depreciated of $27,182. On the books of Union Electric, the gross gain of $33,495 ($60,677–$27,182) will be credited to Account 421, Miscellaneous Non-operating Income, and income taxes of $10,800 on this gross gain will be debited to the same account, leaving a net gain of $22,695 in this account. On the books of Iowa Southern, an acquisition adjustment of $33,495 will be eliminated by a debit to Account 426, Other Income Deductions.

Written notice of the application has been given to the Missouri Public Service Commission, the Iowa State Commerce Commission and the Illinois Commerce Commission and to the Governors of those States. Notice was also published in the Federal Register on November 29, 1966 (31 F.R. 14998) stating that any person desiring to be heard or to make any protest with reference to the application, should on or before December 22, 1966, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Union Electric, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described in the Commission's order issued August 15, 1966, in *Union Electric Company, et al.,* Docket No. E-7299 (36 FPC 447).

(2) Iowa Southern, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 1, 1963, *Iowa Southern Utilities Company*, Docket No. E-7103 (30 FPC 1).

(3) By the proposed transaction, Union Electric will dispose of part of its facilities, subject to the jurisdiction of the Commission, which have a value in excess of $50,000 and Iowa Southern in acquiring such facilities, will merge or consolidate its facilities, subject to the jurisdiction of the Commission, with those of Union Electric, another person, all within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed sale of facilities by Union Electric and the proposed acquisition of these facilities by Southern Iowa, as described above, upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(5) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed sale by Union Electric and the proposed acquisition by Iowa Southern of the aforementioned substation and transmission line facilities, all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Union Electric and Iowa Southern shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the Commission.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65-393

### ORDER GRANTING INTERVENTION AND APPROVING SETTLEMENT AND TERMINATING PROCEEDINGS

(Issued May 29, 1967)

On May 1, 1967, we granted rehearing on our own motion in these proceedings to permit further consideration thereof. On May 12, 1967, Florida Gas Transmission Company filed a Settlement Stipulation and Agreement reflecting acceptance thereof by Florida Gas Transmission Company, Pan American

Petroleum Corporation, Austral Oil Company, and Florida Power & Light Company. On May 22, 1967, the New York Public Service Commission, which had previously filed a notice of intervention and an application for rehearing, filed a Response to the Settlement Stipulation and Agreement referred to above, wherein it stated that it would interpose no formal objection to the effectuation of the Settlement Stipulation and Agreement, and if the Commission approved such settlement, it would file no petition to review such order.

We have reached the conclusion that under the circumstances here presented allowing the New York Public Service Commission to intervene as a party is in the public interest, and we so order below. We also conclude that acceptance of the Settlement Stipulation and Agreement proposed as a resolution of this matter by the parties is in the public interest and serves the public convenience and necessity.

As in other cases in which we have approved settlements, this order is without prejudice to any finding or order which has been, or hereafter may be, entered by the Commission, and is without prejudice to any claim or contention which has been, or hereafter may be, made by the parties, the Commission staff, or any other person or party affected by this order, in any proceeding now pending, or hereafter instituted.

*The Commission finds:*

(1) The Settlement Stipulation and Agreement is in the public interest, and it is appropriate in carrying out the provisions of the Natural Gas Act that it be approved and made effective as hereinafter ordered.

(2) That it is in the public interest to allow the intervention of the New York Public Service Commission.

(3) That Florida Gas has complied with the first two sentences of paragraph (B)(4) of the order of March 1, 1967, 37 FPC 424, relating to acceptance of the certificate and effectiveness of the MMBtu Purchase Contract.

*The Commission orders:*

(A) That the New York Public Service Commission is entered as a party in these proceedings.

(B) The settlement of the proceedings on the basis of the Settlement Stipulation and Agreement is approved and made effective subject to the following terms and conditions:

(1) Paragraph (B)(1) of the order of March 1, 1967, shall be amended to read as follows:

> The gas sold by Pan American Petroleum Corporation and Austral Oil Company to FPL under the MMBtu Purchase Contract of March 12, 1965, as amended, shall be produced entirely within the Southern Louisiana area, Mississippi and other downstream States; that from the date deliveries commence through ten years from such date the proportions of gas produced in the off-shore fields (Federal Domain) of Southern Louisiana shall not exceed 82 percent of the total amount of gas produced in the South Louisiana area. The balance of the takes shall be over the ten-year period. The ratio of the off-shore on-shore takes from the Southern Louisiana area shall be reported to the Commission annually.

(2) Pursuant to the terms of the Settlement Stipulation and Agreement, after the expiration of 15 years from the date of the initial delivery of gas to FPL pursuant to the aforementioned contract, the price for gas sold and delivered shall be equal to the applicable "just and reasonable"

> Area Rate established by the Federal Power Commission from time to time for sales of gas in interstate commerce of the equivalent "vintage" of the gas sold and delivered under the MMBtu Purchase Contract. If there is no applicable "just and reasonable" Area Rate, or if there is a "just and reasonable" Area Rate which is not being generally applied to sales of gas in interstate commerce currently being made in the same general geographical area as the sales made under the MMBtu Purchase Contract, the price for gas sold and delivered shall be the then existing highest price approved by the Federal Power Commission for interstate sales made from the same general geographical area of equivalent "vintage" as gas sold and delivered under the MMBtu Purchase Contract. Different sources of gas shall be considered to bear different "vintage" based on dates of initial delivery to the Buyer under the MMBtu Purchase Contract.

(C) This order is without prejudice to any finding or order which has been, or hereafter may be, entered by the Commission, and is without prejudice to any claim or contention which has been, or hereafter may be made by the parties, the Commission staff, or any other person or party affected by this order, in any proceeding now pending, or hereafter instituted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP67-268

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1967)

On March 17, 1967, Algonquin Gas Transmission Company (Applicant) filed in Docket No. CP67-268 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval of the Commission to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Specifically, Applicant seeks permission and approval of the Commission to abandon approximately 1.19 miles of 26-inch pipeline, part of its J-1 pipeline system in Belmont and Arlington, Massachusetts. Said pipeline, operating subject to a revocable permit, runs through a portion of the roadbed of Massachusetts State Road 2, which is scheduled for regrading and widening. Applicant states that it is not economically feasible to reclaim this section of pipeline as the cost of reclamation would exceed its salvage value.

Accordingly, in order to replace this section of its J-1 system, Applicant seeks authorization to construct and operate approximately 1.21 miles of 30-inch pipeline. In anticipation of expanded service needs, Applicant proposes to use 30-inch pipeline to replace the aforementioned 26-inch pipeline and thereby avoid duplicate construction costs in the future.

The total estimated cost of Applicant's proposed project is $589,600, said cost to be financed through retained earnings.

After due notice, no petition to intervene, notice of intervention or protest has been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Algonquin Gas Transmission Company, a Delaware corporation, having its principal place of business in Boston, Massachusetts, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of February 26, 1951, in Docket No. G–1319 (10 FPC 35).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(7) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Algonquin Gas Transmission Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of the Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within one year from the date of this order.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## BLUE DOLPHIN PIPE LINE COMPANY, DOCKET NO. CP67–246

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1967)

On March 1, 1967, Blue Dolphin Pipe Line Company (Applicant) filed in Docket No. CP67–246 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction, during the twelve-month period commencing March 1, 1967, and operation of natural gas facilities for miscellaneous rearrangements not resulting in any change of the transportation service rendered by means of the facilities involved, all as more fully set forth in the application in this proceeding.

Applicant states that it provides transportation services for Shell Oil Company and Dow Chemical Company from offshore Texas to Freeport, Texas, and that it anticipates the need for certain as yet unascertained rearrangements of its transportation facilities. Such rearrangements will not result in any change in the transportation services rendered by Applicant.

The total cost of facilities proposed under this application will not exceed a maximum of $10,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Blue Dolphin Pipe Line Company, a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of June 1, 1965, in Docket No. CP65–323 (33 FPC 1141).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the twelve-month period commencing March 1, 1967, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $10,000.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Blue Dolphin Pipe Line Company, to construct during the twelve-month period commencing March 1, 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities for miscellaneous rearrangements as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the twelve-month period commencing March 1, 1967, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $10,000.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission Regulations under the Natural Gas Act.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP67-282

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1967)

On March 28, 1967, Eastern Shore Natural Gas Company (Applicant) filed in Docket No. CP67-282 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase totaling 560 Mcf in the firm daily delivery obligations of two existing customers and a decrease of a like amount in the firm daily delivery obligation of another existing customer, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes the following:

(1) To increase the firm delivery obligation for Citizens Gas Company (Citizens) from 1560 Mcf per day to 1820 Mcf per day. This increase is necessary for Citizens to meet the natural gas requirements of a new shopping center and a new industrial customer.

(2) To increase the firm delivery obligation for direct consumption at the municipally-owned power plant of the City of Easton, Maryland from 250 Mcf per day to 550 Mcf per day.

(3) To reduce the present firm delivery obligation for the Stauffer Chemical Company (Stauffer) from 6550 Mcf per day to 5990 Mcf per day from the date of issuance of this order until October 1, 1967. By letter agreement, dated March 20, 1967, Stauffer has agreed to this temporary reduction. Applicant will utilize, on an interim basis, the gas resulting from this reduction to supply the increased needs of Citizens and Easton. Applicant anticipates a permanent increased supply from its sole supplier, Transcontinental Gas Pipe Line Corporation.

No additional facilities are required for the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 29, 1957, in Docket No. G-12200 (18 FPC 710).

(2) The transportation and/or sale of natural gas hereinbefore described as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such transportation and/or sale by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and/or sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Eastern Shore Natural Gas Company, to transport and/or sell natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The proposed transportation and/or sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one month from the date on which this order issues.

(D) This certificate shall not entitle Easton to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its electric generating plant requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) Applicant shall execute and file with the Commission amended service agreements with the City of Easton and Citizens in accordance with the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7351

### ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued May 31, 1967)

Iowa Southern Utilities Company (Applicant) filed an application on May 2, 1967, seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance and sale at competitive bidding of $8,000,000 principal amount of First Mortgage Bonds, due 1997.

Applicant is incorporated under the laws of the State of Delaware with its principal business office at Centerville, Iowa, and is engaged in the electric utility business in 24 counties in south central and southeast Iowa.

The Bonds are to be dated as of June 1, 1967, and are to mature on June 1, 1997. The interest rate will be determined by the most favorable bid received and accepted. They are to be issued under and secured by Applicant's Indenture dated February 1, 1923, to the Northern Trust Company and Harold H. Rockwell, as Trustees, as supplemented and to be further supplemented by a new Supplemental Indenture to be dated as of June 1, 1967.

On or about June 1, 1967, Applicant proposes to invite sealed written bids for the purchase of the Bonds by newspaper publication and by a public invitation for bids for the purchase of the Bonds, setting forth terms and conditions relating thereto.

All bids must be submitted on the Form of Bid furnished by the Applicant. Each bid must be for the purchase of all the Bonds and may be made by a single bidder or by a group of bidders. Bids must be presented to the Applicant at the office of Middle West Service Company, 69 West Washington Street, 33rd Floor, Chicago, Illinois, before 11 a.m. Chicago time, on Thursday, June 8, 1967, and be accompanied by deposits of $80,000.

Each bid shall specify the interest rate to be borne by the Bonds, which rate shall be a multiple of 1/8th of 1%; and the price to be paid to the Applicant, which price shall not be less than 98% of principal amount and not more than 103% of principal amount. Each bid shall provide that accrued interest from June 1, 1967 to date of payment and delivery will be paid by the purchaser or purchasers to the Applicant.

Unless the Applicant shall reject all bids or exclude a bid or bids for reasons set forth in the Statement of Terms and Conditions Relating to Bids, it will accept the bid which provides for the lowest annual cost of money.

The Applicant's construction program has been financed in part by the issuance of short-term notes.* Notes outstanding are expected to total $9,600,000 at the time of the sale of the new bonds. The proceeds from the $8,000,000 new Bonds will be used to discharge the same principal amount of short-term notes. The Applicant's construction program has an estimated cost of $35,943,200, of which $8,666,800 was spent prior to December 31, 1966, and expenditures for 1967 and 1968 are estimated at $19,895,300 and $7,381,100, respectively. The principal item in this program, construction work on the 212 mw Burlington Generating Station, will require an expenditure of approximately $18,300,000 during 1967 and 1968.

Written notice of the application has been given to the Iowa State Commerce Commission and the Governor of that State. Notice has also been given by publication in the Federal Register on May 16, 1967 (32 F.R. 7304), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before May 19, 1967, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 1, 1963, *Iowa Southern Utilities Company*, Docket No. E-7103 (30 FPC 1).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(5) The period of public notice is reasonable.

*The Commission orders:*

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not to be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

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* The Commission approved the issuance of these short-term Notes by order issued April 28, 1967, Docket No. E-7277, 37 FPC 827.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## K. R. AND T. GAS COMPANY AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP67-275

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued May 31, 1967)

On March 23, 1967, K. R. and T. Gas Company (Applicant), filed in Docket No. CP67-275 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Respondent) to establish physical connection of its facilities with the facilities of Applicant and to sell and deliver to Applicant up to 125 Mcf of natural gas for resale and distribution in Elmdale, Kansas, and environs, all as more fully set forth in the application.

Specifically, Applicant proposes to relocate approximately 2,600 feet of its existing 2-inch pipeline in order to interconnect its system with Respondent's 26-inch transmission line at a point approximately 1.63 miles north of Elmdale.

Applicant's estimated third year annual and peak day requirements are 15,000 Mcf and 125 Mcf of natural gas, respectively. Said volumes of natural gas will be purchased under the terms of Respondent's effective rate schedule F-1 at an average rate of 28 cents per Mcf.

The total estimated cost of Applicant's proposed project is $500, which cost will be financed from cash funds on deposit at the Peoples Exchange Bank, Elmdale, Kansas.

On April 12, 1967, Kansas State Corporation Commission filed a notice of intervention, stating that it does not request a formal hearing but asked to be apprised of all matters pertaining to the subject application. On May 8, 1967, the Kansas Commission withdrew its notice of intervention, declaring that it had obtained the information it sought. No other notice of intervention, petition to intervene or protest has been filed.

On May 1, 1967, Respondent filed an answer to the application stating that it has no objection to the issuance by the Commission of an order as requested by Applicant.

*The Commission finds:*

(1) Respondent, Cities Service Gas Company, a Delaware corporation, having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant, K. R. and T. Gas Company, a partnership organization organized and existing under the laws of the State of Kansas, is authorized to construct and operate facilities and distribute and sell natural gas as proposed.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transmission facilities with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 125 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP67–230

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1967)

On February 13, 1967, Michigan Gas Storage Company (Applicant) filed in Docket No. CP67–230 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of three new delivery points between Applicant and Consumers Power Company (Consumers), the establishment of a new delivery point between Applicant and Panhandle Eastern Pipe Line Company (Panhandle) and the construction and operation of the necessary metering and regulating facilities at the proposed new delivery points, all as more fully set forth in the application.

Applicant seeks authorization for the following three projects:

(1) to establish three new delivery points for the delivery of natural gas between Consumers and Applicant

(i) in section 24, Sylvan Township, Washtenaw County, Michigan,

(ii) in section 8, Grand Blanc Township, Genesee County, Michigan, and

(iii) in Section 21, Genesee Township, Genesee County, Michigan;

(2) to establish a new delivery point for the delivery of natural gas between Panhandle and Applicant in Section 21, Genesee Township, Genesee County, Michigan; and

(3) to construct and operate the necessary metering and regulating facilities at the proposed delivery points in Section 21, Genesee Township, Genesee County, Michigan.

The purpose of the proposed new delivery point in Section 24, Sylvan Township, Washtenaw County, Michigan, is to afford greater security to the systems of Applicant and Consumers and to increase the capacity of said systems.

The purpose of the proposed new delivery points in Section 8, Atlas Township, and Section 21, Genesee Township, Genesee County, Michigan, is to increase the ability of Consumers to deliver natural gas into the Flint, Michigan, area in order to meet increased requirements of Consumers' customers and to assure continuity of service in such area.

Applicant estimates the total cost of the proposed construction at approximately $92,000, said cost to be financed out of funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Michigan Gas Storage Company, a Delaware corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 3, 1946, in Docket No. G–731 (5 FPC 965).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

***The Commission orders:***

(A) A certificate of public convenience and necessity is issued to Michigan Gas Storage Company in this proceeding, authorizing the construction and operation of facilities, as hereinbefore described and more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months from the date on which this order issues.

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## OPINION NO. 519-A

## NORTHERN NATURAL GAS COMPANY, DOCKET NOS. CP65-1, CP65-91 AND CP65-338; NATURAL GAS PIPELINE COMPANY OF AMERICA (PHASE II), CP65-169; TRANSWESTERN PIPELINE COMPANY, CP65-208, CP65-236 AND CP65-237

### OPINION AND ORDER DENYING REHEARING

(Issued May 31, 1967)

### *Syllabus*

1. Argument that Commission refused to consider comparative costs of competing projects is rejected. P. 1006.
2. Under most favorable conditions shown in record, indicated immediate cost advantages from acceptance of Transwestern proposal are more than offset by risks of changed circumstances and handicaps to Natural in obtaining gas supplies and competing as a pipeline. P. 1007.
3. If Natural entered into an exchange transaction with Transwestern it could not use a budget-type authorization under Section 157.7(b) of the Regulations as it could if it were connecting supplies to its own system. P. 1007.
4. Commission *denies* rehearing of prior Opinion and order.

Commissioner Ross *dissenting.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

O'CONNOR, *Commissioner:*

On May 1, 1967, Transwestern Pipeline Company, and the People of the State of California and the Public Utilities Commission of the State of California filed applications for rehearing of the Commission's Opinion No. 519 and order issued March 30, 1967, 37

FPC 649. In that opinion we granted certificates to Northern Natural Gas Company and Natural Gas Pipeline Company of America to construct and operate pipelines to connect reserves in the Delaware Basin with their pipeline systems. We denied an alternative proposal by Transwestern to transport through its West Texas and Panhandle lateral lines volumes of gas for Northern or Natural.

Transwestern argues that we have refused to consider the comparative costs of the competing projects. To the contrary we set forth in the opinion a number of comparative figures found in the record but determined from our examination of these figures that even assuming the comparisons most favorable to Transwestern, any such cost advantages were outweighed by other considerations which, in our opinion, required certification of the separate line. Specifically, we found that any initial cost advantage the Transwestern proposal would have over the separate Natural proposal would tend to diminish as Natural would require increasing amounts of gas transported, and over the long range would be outweighed by the other factors discussed in the opinion.

Transwestern expresses doubt about Natural's plans for increased takes of gas from the Delaware Basin. We had cited evidence that Natural expects to take at least 200,000 Mcfd on a peak day from existing Permian Basin sources and has plans for securing about 75,000 Mcfd more each year from the same area, so that Natural would reach 450,000 Mcfd in approximately four years. Through the testimony of Natural's witness the record indicates that its reserves in the Indian Basin amount to over a trillion cubic feet. While this figure is not supported by a reserve study, it is in line with known developments in the area,[1] and supports an initial take of 200,000 Mcfd. It is immaterial that at this time Natural may not have reserves sufficient for the entire 450,000 Mcfd. This is a reasonable prediction for the future based on the potentialities of the Delaware Basin area, and as such is relevant to the issue of whether the Transwestern proposal has as great permanent utility as that advanced by Natural and certificated by us.

Transwestern objects to our statements indicating that its proposed rates are subject to future hazards. Transwestern argues that this Commission has authority to regulate its rates and should not reject its application on the basis of what the Commission might do in some future rate proceeding. This misses the point. What we had in mind was the tendency of any initial rate or cost advantage existing in the Transwestern proposal to erode because, as Transwestern itself proclaimed, the circumstances which justify a particular rate would not necessarily exist as the nature of Transwestern's obligations to serve Natural changed.

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[1] Natural's Form 15 on file with the Commission shows that its reserves as of January 1, 1967, in the Indian Basin, Dagger Draw, and Bluitt Fields amounts to 1,351,396 MMcf at 14.73 psia. We note also that Natural has recently filed an application in Docket No. CP67-298 to increase the capacity of its Permian Basin pipeline to 225,000 Mcfd.

The essence of our decision, in other words, is that under the most favorable conditions shown in the record the indicated immediate cost advantages from acceptance of the Transwestern proposal are more than offset by the risks of changed circumstances and by handicaps to Natural in obtaining gas supplies and competing as a pipeline. Transwestern answers that its service agreement with Natural would provide that if maximum exchange volumes required by Natural become greater than 158,000 Mcfd, it will promptly apply to the Commission for authorization to install and operate the required additional facilities. In our opinion, aside from the fact that Transwestern does not state its price to Natural would or could remain the same after such construction, this would still seriously impair Natural's freedom to contract for more gas supplies, and we do not think that this kind of enforced combination is justified in the circumstances of this case. When we said that, certification of the Transwestern proposal would be detrimental to Natural, contrary to the implications of California, we were considering not only rates, but were looking at the entire situation. We found these detriments more than inconveniences but rather impediments to successful business functioning by Natural.

Contrary to Transwestern's contentions, if Natural entered into an exchange transaction with Transwestern it could not use a budget-type authorization under Section 157.7(b) of our Regulations as it could if it were connecting supplies to its own system. Such an authorization would not be possible because our Regulations require that gas-purchase facilities involved in a budget-type authorization be connected with the applicant's own system (Section 157.7(b)(4)). There is now no more need for oral argument than at the time of our original opinion and order.

*The Commission further finds:*

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no facts or legal principles which would warrant any change in or modification of the Commission's Opinion No. 519 and order.

*The Commission orders:*

(A) The applications for rehearing filed by Transwestern and California are denied.

(B) The request for oral argument by Transwestern is denied.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

I would grant Transwestern's application for rehearing because it is clear to me that the majority has failed to make the findings and conclusions required by the Administrative Procedure Act. Section 1007(b) expressly provides that:

> All decisions * * * shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief or denial thereof.

Despite all its expostulations about examining cost figures with regard to services to be provided by Transwestern for Natural, the majority never once states in equivalent terms any figures on the so-called offsetting benefits which the consumers of Natural will receive from separate certification of Natural's proposal. Simply stated, the Commission is indorsing Natural's proposal because Natural doesn't want to exchange gas with Transwestern. Henceforth, it will be sufficient, even in a comparative proceeding, for a pipeline to state that it does not want to enter into a transaction that would accrue to the benefit of the consumers unless it wants to. Parties like Transwestern who may present an economically superior proposal will be at a loss to know just what they must offer in a proceeding, if it is at all possible to offer anything, to persuade the Commission to the contrary of the result reached herein.

One additional point merits comment: it was never my intent that budget-type authorizations, which were simply meant to simplify management's relationships with this Commission, should be used to preclude an exchange transaction. The majority's resort to such an argument seems to support further my belief that what the majority really is rejecting in this case is the concept of exchange transaction between pipelines upon order of the Commission rather than a comparison of Transwestern's proposal to Natural's.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-250

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1967)

On March 6, 1967, Northern Natural Gas Company (Applicant) filed in Docket No. CP67-250 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate a 7,250 horsepower compressor unit at its Beaver, Oklahoma, Compressor Station to compress volumes of mainline natural gas, and to rearrange station piping to convert 3—2,000 horsepower units from mainline to field compressor service. The proposals will enable Applicant to compress the gas from local sources and meet gas purchase obligations under contracts with producers.

Applicant estimates the cost of the proposed construction at approximately $2,419,900, which will be defrayed out of internal sources.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application herein, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The aforesaid proposed construction and operation of facilities is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## O. F. & R. OIL COMPANY, DOCKET NO. CS67-48

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING SMALL PRODUCER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, CANCELLING FPC GAS RATE SCHEDULES, AND TERMINATING CERTIFICATES

(Issued May 31, 1967)

On February 23, 1967, O. F. & R. Oil Company filed in Docket No. CS67-48 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce from the Permian Basin area of Texas and New Mexico, all as more fully set forth in the application.

Applicant is presently authorized to sell natural gas in interstate commerce subject to the jurisdiction of the Commission from the Permian Basin area; therefore, the small producer certificate issued herein shall be effective on the date of this order, the certificates heretofore issued to Applicant for sales from the Permian Basin area will be terminated, and the related rate schedules will be cancelled.

In accordance with the principles set forth in the order issued February 6, 1967, 37 FPC 281, in *Rodman and Late, et al.*, Docket No. CS66-48, *et al.*, Applicant herein, pending judicial review of Opinion No. 468, 34 FPC 159, will be permitted to file for above-ceiling rates. However, before collecting an above-ceiling rate Applicant will be required to file a notice of change in rate, together with any amendments thereto, relating to such sale. Any such notice of change in rate will be subject to suspension pursuant to Section 4(e) of the Natural Gas Act.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been received.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sales of natural gas hereinbefore described, as more fully described in the application herein, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) Applicant is an independent producer of natural gas who is not affiliated with natural gas pipeline companies and has not made jurisdictional sales during the preceding calendar year exceeding 10,000,000 Mcf of natural gas.

(5) The sales of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and a small producer certificate of public convenience and necessity therefor should be issued as hereinafter ordered and conditioned.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificates heretofore issued to Applicant for sales from the Permian Basin area should be terminated and the related rate schedules should be cancelled.

*The Commission orders:*

(A) A small producer certificate of public convenience and necessity is issued upon the terms and conditions of this order authorizing the sale for resale and delivery of natural gas in interstate commerce by Applicant from the Permian Basin area of Texas and New Mexico, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission, and particularly,

(a) The subject certificate shall be applicable only to all future "small producer sales," as defined in Section 157.40(a)(3) of the Regulations under the Natural Gas Act, from the Permian Basin area;

(b) Sales shall not be at rates in excess of those set forth in Section 157.40(b)(1) of the Regulations under the Natural Gas Act; however, Applicant may file notices of changes in rate for any contractually authorized rates in excess of the ceiling rates, which increased rates shall be subject to suspension pursuant to Section 4(e) of the Natural Gas Act and subsequently may be rejected as of the date of filing, as provided by the Order Granting Relief issued February 6, 1967, in Docket No. CS66-48, *et al.;*

(c) Applicant shall file annual statements pursuant to Section 154.104 of the Regulations under the Natural Gas Act.

(C) The certificate granted in paragraph (A) above shall remain in effect for small producer sales until the Commission on its own motion or on application terminates said certificate because Applicant no longer qualifies as a small producer or fails to comply with the requirements of the Natural Gas Act, the regulations thereunder, or the terms of the certificate. Upon such termination Applicant will be required to file separate certificate applications and individual rate schedules for future sales. To the extent compliance with the terms and conditions of this order is observed, the small producer certificates will still be effective as to those sales already included thereunder.

(D) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 7 of the Natural Gas Act or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customers involved imply approval of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales subject to said certificate.

(E) The certificate issued herein shall be effective on the date of this order.

(F) The certificates heretofore issued to Applicant in Docket Nos. G–19681 and CI67–310 are terminated and Applicant's FPC Gas Rate Schedule Nos. 1 and 2 are cancelled.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SHENANDOAH GAS COMPANY, DOCKET NO. CP67–273

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1967)

On March 22, 1967, Shenandoah Gas Company (Applicant) filed in Docket No. CP67–273 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities in Berkeley County, West Virginia, and for a certificate of public convenience and necessity authorizing certain other facilities for the transportation and sale of increased volumes of natural gas on an interruptible basis to Continental Clay Products Company (Continental), an industrial customer in Berkeley County, West Virginia, all as more fully set forth in the application.

Applicant seeks authorization (1) to abandon 200 feet of 2-inch I.D. steel pipe together with existing regulators and metering equipment which is part of Applicant's 800-foot lateral extension from its main transmission line to Continental in Berkeley County, West Virginia; and (2) to construct and operate 1,500 feet of 4-inch I.D. steel pipeline with necessary metering and regulating facilities extending from its main transmission line to Continental.

The estimated interruptible peak day and annual requirements of Continental for the first three years of operation are:

| | 1st year | 2d year | 3d year |
|---|---|---|---|
| Peak day (Mcf) | 1,643 | 2,062 | 2,062 |
| Annual (Mcf) | 532,400 | 688,500 | 688,500 |

The total estimated cost of the proposed facilities is $17,000 which cost will be financed through open account advances by Applicant's parent, Washington Gas Light Company.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits thereto submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Shenandoah Gas Company, a Virginia corporation having its principal place of business in Washington, D.C., is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 12, 1954, in Docket No. G–1448 (13 FPC 579).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities by Applicant is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described and as more fully described in the application are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant, authorizing the construction and operation of facilities and transportation of natural gas as hereinbefore described and as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(E) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(F) The facilities authorized herein shall be completed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations, by September 1, 1967.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED FUEL GAS COMPANY, DOCKET NO. CP67-228

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued May 31, 1967)

On February 14, 1967, United Fuel Gas Company (Applicant) filed in Docket No. CP67-228 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant seeks authorization for the following unrelated projects:

*To construct and operate:*

(1) Approximately 10.3 miles of 6-inch pipeline extending from Applicant's existing 20-inch pipeline in Pike County, Kentucky, northward to its existing distribution system serving the area of Williamson, Mingo County, West Virginia, together with the necessary measuring and regulating facilities,

(2) Approximately 4.3 miles of 4-inch pipeline extending northward from Applicant's 20-inch pipeline in Monroe County, West Virginia, to the area of Ronceverte and Lewisburg in Greenbrier County, West Virginia, replacing approximately 4.3 miles of existing 3 and 4-inch pipeline which Applicant proposes to abandon,

(3) Approximately 0.2 of a mile of 16-inch pipeline which crosses under Buck Creek in Martin County, Kentucky, west of Applicant's Kermit Compressor Station, replacing approximately 0.2 of a mile of existing multiple 10-inch river crossing which Applicant proposes to abandon,

(4) two small segments of 10 and 8-inch pipeline located south of Milton, Cabell County, West Virginia, and replacing two small segments of 10 and 20-inch pipeline which Applicant proposes to abandon. The first involves replacement of approximately 0.1 of a mile of quadruple 10-inch pipeline crossing under Mud River by a single section of 10-inch pipeline. The second involves replacement of approximately 0.1 of a mile of 20-inch pipeline by 0.1 mile of 8-inch pipeline.

(5) to install and operate two 1,320 horsepower, two stage compressor units at its Kermit Compressor Station in Mingo, County, West Virginia,

*To abandon:*

4,125 horsepower of compressor engines at Kermit Compressor Station in Mingo County, West Virginia.

Applicant proposes to replace and augment said compressor and pipeline facilities in Kentucky and West Virginia, which due to age and condition, is required to assure adequacy and reliability of service.

Applicant estimates the cost of the proposed construction at approximately $1,587,600, said cost to be financed through cash on hand or the issuance and sale of promissory notes or common stock to its parent company, The Columbia Gas System, Inc.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits thereto submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G-341 (4 FPC 534).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described, as more fully described in the application in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities and transportation of natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP67-242

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF SERVICES AND FACILITIES

(Issued May 31, 1967)

On February 27, 1967, United Gas Pipe Line Company (Applicant) filed in Docket No. CP67-242 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove certain natural gas facilities, all as more fully set forth in the application.

Specifically, Applicant seeks permission and approval for the abandonment and removal of the following facilities:

(1) 0.15 miles of 6 and 4-inch pipeline and an orifice meter station, serving Allied Chemical Corporation (Allied Chemical) near Orange, Orange County, Texas;

(2) One dual positive meter station and appurtenant facilities, serving Winnsboro Materials, Inc. (Winnsboro Materials) in Franklin Parish, Louisiana; and

(3) 6.6 miles of 18-inch and 4.0 miles of 12-inch lateral supply pipeline from the Rodessa Field, Caddo Parish, Louisiana.

Applicant proposes to remove, salvage and recondition said facilities for use elsewhere on its system as needed.

Service to Allied Chemical commenced on December 1, 1953. The existing contract between the parties dated June 1, 1956, expired by its own terms on January 1, 1967, and Allied Chemical does not desire to extend such agreement.

Service to Winsboro Materials commenced on April 2, 1963, and the existing contract between the parties dated February 5, 1965, was cancelled pursuant to a letter agreement between the parties dated January 25, 1967.

The subject 12-inch segment of the line proposed to be removed from the Rodessa Field was completed and placed in operation on November 30, 1934, and the 18-inch segment was completed and placed in operation on November 22, 1936. Applicant no longer has any gas purchase contracts for gas produced from the Rodessa Field and such facilities are no longer needed in its operations.

Applicant estimates the salvage value of the facilities proposed to be abandoned at $39,445.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

At a hearing held on May 25, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation, having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities to be abandoned, as hereinbefore described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered and conditioned.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted upon the terms and conditions of this order.

(B) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7044

### SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK AND MODIFICATION OF EMPLOYEE STOCK PURCHASE PLAN

(Issued June 2, 1967)

Iowa Southern Utilities Company (Applicant), incorporated under the laws of Delaware and qualified to do business as a foreign corporation in Iowa, with its principal business office at Centerville, Iowa, filed a supplemental application on April 19, 1967, pursuant to Section 204 of the Federal Power Act, seeking authorization to issue 7,104 additional shares of its Common Stock, par value $10 per share, under its Employee Stock Purchase Plan as modified.

The Commission authorized Applicant to issue 20,000 shares under the plan by its order in this docket issued July 17, 1964, 32 FPC 197. Some 7,104 of the 20,000 shares having been sold, the applicant seeks authorization to issue 7,104 new shares so that it will again have 20,000 shares available under the plan.

Applicant proposes modifications of the plan as follows: (1) the price per share of Common Stock of the Applicant purchased under the plan to be 90% (rather than 95%) of the market bid price on June 15th and December 15th of each year as published in the midwest edition of the Wall Street Journal, but not less than the par value of the stock, and (2) the payroll deductions for the purchase of stock to be a maximum of 20% (rather than 10%) of the employee's regular pay base.

Applicant also requests an exemption from the Commission's competitive bidding requirements. On the basis of the present market price of about $28⅛ per share, the entire 20,000 shares of Common Stock, $10 par value, for issuance under the plan would produce proceeds of about $513,000. In accordance with Section 34.1a(a)(3) of the Commission's Regulations under the Federal Power Act, since the proceeds will be less than $1 million, and also because of the nature of the issuance, competitive bidding is not required.

Proceeds from the sale of the common stock will be used for general corporate purposes.

Written notice of the application has been given to the Iowa State Commerce Commission and the Governor of that State. Notice was published in the Federal Register on May 6, 1967 (32 F.R. 6993) stating that any person desiring to be heard or to make any protest with reference to the application should, on or before May 18, 1967, file petitions or protests with the Federal Power Commission, Washington, D.C. 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) The proposed issuance of an additional 7,104 shares of Common Stock, $10 par value, for a total of 20,000 shares of Common Stock pursuant to the provisions of the Applicant's Employee Stock Purchase Plan as modified will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(2) The proceeds from the sales of the shares of Common Stock for issuance under the Employee Stock Purchase Plan will be less than $1 million, and, therefore, the proposed issuance and sale of Common Stock is exempt from the

competitive bidding requirements by reason of paragraph 34.1a(a)(3) of the Regulations under the Federal Power Act.

(3) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(4) The period of public notice is reasonable.

*The Commission orders:*

(A) The proposed issuance and sale of 7,104 additional shares of Common Stock, $10 par value, pursuant to the provisions of the Employee Stock Purchase Plan as modified and set forth in the supplemental application is hereby authorized.

(B) The proposed issuance and sale of the additional shares of Common Stock are hereby exempted from the competitive bidding requirements of Sections 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations or cost, or any other matter whatsoever which may come before the Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States, with respect to any securities to which this order relates.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65–91

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 2, 1967)

On April 5, 1967, Northern Natural Gas Company (Petitioner) filed in Docket No. CP65–91 a petition to amend the order issued by the Commission on March 30, 1967, 37 FPC 649 (Opinion No. 519), so as to authorize Petitioner to construct and operate a 30-inch pipeline and appurtenant facilities in place of the 26-inch pipeline and appurtenant facilities originally authorized, all as more fully set forth in the petition to amend.

In the order of March 30, 1967, under lead Docket No. CP65–1, *et al.* (Opinion No. 519) Petitioner was authorized, among other things, to construct and operate 365 miles of 26-inch diameter pipeline between Kermit, Texas and its Beaver compressor station in Beaver County, Oklahoma. Paragraph (C) of the order directed Petitioner to file within twenty days data showing that the capacity of the 26-inch line is adequate to handle its proven reserves in the Delaware Basin; however, if the reserves are of such volume as to require a larger line, then the 26-inch line shall not be constructed and Northern shall file an amendment for an appropriate size pipeline.

Pursuant to Paragraph (C), Petitioner filed the instant amendment, requesting authority to construct and operate a 30-inch pipeline in lieu of the 26-inch pipeline because such pipeline is not adequate to transport the proven reserves in the Delaware Basin. The 30-inch pipeline will have a capacity of 517,000 Mcf per day.

Petitioner estimates the total cost of the larger facilities together with appurtenances at approximately $47,653,420, said cost to be financed from the sale of sinking fund debentures and, to the extent required, the use of cash-on-hand, reserve accruals and retained earnings.

Due notice of the filing of the petition to amend and opportunity for hearing has been given by publication in the Federal Register on April 20, 1967 (32 F.R. 6228). No protest or petition to intervene has been filed in this proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued March 30, 1967, in Docket No. CP65–91 (Opinion No. 519), granting Northern certain certificate authorizations, be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued March 30, 1967, in Docket No. CP65–91 (Opinion No. 519), is amended so as to authorize Petitioner to construct and operate 365 miles of 30-inch pipeline between Kermit, Texas and its Beaver Compressor Station in Beaver County, Oklahoma, in lieu of the 26-inch line authorized therein.

(B) In all other respects said order shall remain in full force and effect.

(C) The amendment authorized by Paragraph (A) above and the rights granted thereunder are conditioned upon Petitioner's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in paragraphs (f) and (g) of Section 157.20 of such Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLUMBIA GULF TRANSMISSION COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, UNITED FUEL GAS COMPANY, DOCKET NO. CP67–278

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 5, 1967)

On March 24, 1967, Columbia Gulf Transmission Company (Columbia), Texas Eastern Transmission Corporation (Texas Eastern) and United Fuel Gas Company (United Fuel) (jointly called Applicants) filed in Docket No. CP67–278 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the exchange of natural gas between the parties, all as more fully set forth in the application.

Columbia Gulf, Texas Eastern and United Fuel seek authorization for the construction and operation of an interconnection between the pipeline systems of Columbia Gulf and Texas Eastern. The proposed interconnection will be located in Adair County, Kentucky, approximately two and one-half miles northeast of the town of Gradyville, Kentucky, at a point on Columbia Gulf's 30-inch pipeline and Texas Eastern's 30-inch and 36-inch pipeline system, approximately 1,945 feet northeasterly from the intersections of the pipelines with Kentucky State Highway No. 959.

Columbia Gulf and Texas Eastern will each install, own and operate at its own expense its own pipeline taps and side valves at the point of interconnection. Columbia Gulf will construct the meter tube section and the tieover line and will acquire and fence the necessary property for the installation of the proposed interconnection. All construction and land costs associated with the interconnection, with the exception of the taps and side valves to be installed by each company, will be shared equally between Texas Eastern and Columbia Gulf.

The proposed interconnection and the proposed exchange of gas are the subjects of an agreement among Texas Eastern, Columbia Gulf and United Fuel dated October 3, 1966. Upon receipt of the authorization herein requested, each Applicant will file this agreement as a special rate schedule to its FPC Gas Tariff.

The subject agreement provides for utilization of the proposed interconnection when either company is confronted with a situation which can be alleviated by deliveries of natural gas from the other. Under the terms of the agreement, either party, upon request from the other, will make such deliveries of natural gas as, in its sole judgment, it can make without impairment of its service obligations to others. Within 60 days following the receipt of deliveries of natural gas, unless a longer period is mutually agreed to, the party receiving such deliveries will be obligated to return a like volume of natural gas to the other or pay for such deliveries at Texas Eastern's 100% load factor price per Mcf under its Rate Schedule DCQ in effect at that time for the zone in which deliveries were made. All such deliveries and receipt of gas and any payments by or to Columbia Gulf will be made for the account of United Fuel.

Applicants estimate the total cost of the proposed construction at approximately $23,600 of which $13,900 will be shared equally by Columbia and Texas Eastern, the balance being for the construction of taps and side valves which each company will construct at its own expense.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 1, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 5, 1958 in Docket No. G-15524 (20 FPC 681).

(2) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charlestown, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found

by the Commission in its order of September 9, 1958 in Docket No. G-13372 (20 FPC 347).

(3) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949 in Docket No. G-1089 (8 FPC 228).

(4) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and exchange of natural gas by Applicants, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed exchange and delivery of natural gas and the construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that United Fuel and Texas Eastern shall file an exchange agreement as special FPC Rate Schedules in accordance with the applicable Commission Regulations.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Applicants in this proceeding, jointly, authorizing the exchange and delivery of natural gas as hereinbefore described, and the construction and operation of facilities for the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the joint application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within 6 months of the date on which this order issues.

(D) Applicants shall file the exchange agreement as special rate schedules to their respective FPC Gas Tariffs in accordance with the Commission's Regulations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP67-320

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 5, 1967)

On May 1, 1967, Mississippi River Transmission Corporation (Applicant) filed in Docket No. CP67-320 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction, during the twelve-month period commencing June 1, 1967, and the operation of certain natural gas facilities to enable Applicant to take into its pipeline system natural gas which will be purchased from producers and other similar sellers in the general area of Applicant's existing pipeline system, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $600,000, with no single project to exceed a cost of $150,000, which costs are proposed to be financed from funds on hand and funds generated from Applicant's operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 1, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly, the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the twelve-month period commencing June 1, 1967, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $600,000, with no single project to exceed a cost of $150,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Mississippi River Transmission Corporation, to construct during the twelve months period commencing June 1, 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers and other similar sellers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the twelve-month period commencing June 1, 1967, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $600,000, with no single project to exceed a cost of $150,000.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.; S. T. CONSTANTINE (OPERATOR), ET AL., AND ROY E. KIMSEY, JR. (OPERATOR), ET AL., DOCKET NO. RI60-43

### ORDER SEVERING AND TERMINATING PROCEEDING

(Issued June 6, 1967)

Roy E. Kimsey, Jr. (Operator), *et al.* (Kimsey) has submitted a request that the Commission terminate the proceeding in Docket No. RI60-43 which involves the sale of natural gas to El Paso Natural Gas Company (El Paso) from the

Noekle Field, Crockett County, Texas R. R. District No. 7–c. The subject proceeding concerns a rate increase from 9.5¢ per Mcf to 14.69578¢ per Mcf which was filed by S. T. Constantine (Operator), *et al.* (Constantine), Kimsey's predecessor-in-interest. This proceeding was consolidated with Docket No. AR61–1, *et al.* by the Commission in its order issued December 23, 1960, 24 FPC 1121.

In support of his request, Kimsey states that the base area rate for the gas involved in this sale is 14.5¢ per Mcf as prescribed in Opinion No. 468, 34 FPC 159, and that he has collected only 14.5¢ in Docket No. RI60–43. Kimsey was granted a small producer certificate to make this sale on July 20, 1966 in Docket No. CS66–66. By letter dated May 11, 1967, El Paso informed the Commission that both Kimsey and Constantine billed El Paso at 14.5¢ per Mcf for all gas sold in this proceeding and that El Paso has paid them no more than 14.5¢ per Mcf for the gas. Accordingly, as the price of gas collected in this proceeding did not exceed the applicable area rate, Docket No. RI60–43 should be severed from Docket No. AR61–1 and the proceeding in Docket No. RI60–43 should be terminated.[1]

*The Commission finds:*

For the foregoing reasons, good cause exists for severing Docket No. RI60–43 from the proceeding in Docket No. AR61–1, *et al.*, for terminating the proceeding in Docket No. RI60–43 and for discharging the surety bonds filed by respondents in Docket No. RI60–43.

*The Commission orders:*

(A) The proceeding in Docket No. RI60–43 is severed from the proceeding in Docket No. AR61–1, *et al.*, and terminated.

(B) The surety bonds filed by Constantine and Kimsey in Docket No. RI60–43 are discharged.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), GULF RESOURCES, INCORPORATED AND NATURAL GAS GATHERING COMPANY, DOCKET NO. AR64–2

### ORDER GRANTING MOTION TO DISMISS

(Issued June 6, 1967)

Gulf Resources, Incorporated (Gulf) on January 20, 1967, filed a motion to dismiss Natural Gas Gathering Company (Natural) and itself from Docket No. AR64–2.

Gulf gathers and transports gas, which is purchased by Tennessee Gas Pipeline Company, a division of Tenneco Inc. (Tennessee) from various producers at or near the wellhead in Starr and Zapata Counties, Texas, to Tennessee's main transmission line. Gulf's line, including lateral lines, is approximately 75 miles long. Gulf, which does not purchase or sell the subject gas, receives 2.85¢ per Mcf from Tennessee for its transportation service.

The facilities utilized for transportation were at one time jointly owned by Gulf and Natural. Gulf and Natural were not affiliated initially, but Gulf later acquired all of Natural's stock and thereafter absorbed Natural.

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[1] Although the subject request was not made on behalf of Constantine, he will receive similar treatment since it is clear that he would qualify as a small producer.

Natural which had filed a producer rate schedule covering the charges for the subject service was named a respondent in Docket No. AR64–2 by order issued November 27, 1963, 30 FPC 1354. Gulf was later named a respondent in Docket No. AR64–2 by order issued June 22, 1964, 31 FPC 1578.

Gulf and Natural received permanent certificate authorization by order issued May 10, 1966, 35 FPC 704, in Docket No. CI61–282 and were there classified as pipelines. That order was amended on September 16, 1966, 36 FPC 643, to give effect to the dissolution of Natural as a separate entity.

Gulf asserts in its motion that it is not properly a party in Docket No. AR64–2 because it does not engage in jurisdictional purchases of gas and does not make jurisdictional sales of gas. The Commission in an area rate proceeding has the power to determine the proper rate for a transportation service by an independent producer, and the existence of a jurisdictional sale or purchase is not a prerequisite to the exercise of such power. The foregoing reasons advanced by Gulf therefore do not justify the requested action.

We understand, however, that no evidence has been presented by any party in Docket No. AR64–2 with respect to either the status of Gulf as a producer or pipeline for purposes of regulating its rate or the proper rate for its transportation service. Consequently, there is no justification for retaining Gulf as a respondent in Docket No. AR64–2.[1] Such action will be without prejudice to any future action we may take relating to either the status of Gulf or its transportation rate.

*The Commission orders:*

(A) For the reasons set forth above, Gulf and Natural are dismissed as respondents in Docket No. AR64–2.

(B) The action herein is without prejudice to any action the Commission may take in the future with respect to the status of Gulf as an independent producer or a pipeline for purposes of regulating its rate or the proper rate for Gulf's transportation service.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E–7347

### SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued June 6, 1967)

By order issued May 19, 1967, 37 FPC 955, in the above-entitled matter, the Commission authorized Northern States Power Company, (Applicant), to issue and sell at competitive bidding $30,000,000, principal amount of First Mortgage Bonds, due 1995, subject among others, to the provisions set forth in paragraph (B) of that order as follows:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

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[1] Since Natural is no longer in existence it is clear that it should be dismissed as a respondent.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant on June 6, 1967, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Blyth & Co., Inc., and The First Boston Corporation, to purchase the proposed issuance of $30,000,000, principal amount of Bonds, for the price of 100.419% of principal amount, with an interest rate of 6⅛%, resulting in a cost of money to the Applicant of 6.09%.

*The Commission finds:*

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued May 19, 1967, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

*The Commission orders:*

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D) and (E) of the Commission's order issued May 19, 1967, in the above docket.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS GAS PIPE LINE CORPORATION, DOCKET NO. CP66–418; UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORPORATION, DOCKET NO. CI66–1296; NECHES PETROLEUM CORPORATION, DOCKET NO. RI63–193; CLEGG & HUNT (OPERATOR), ET AL., DOCKET NO. RI60–405; RESERVE OIL & GAS COMPANY, DOCKET NO. G–18570 AND RI64–789

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, PERMITTING AND APPROVING ABANDONMENT, CONDITIONALLY ACCEPTING OFFERS OF SETTLEMENT, AND TERMINATING CERTIFICATE

(Issued June 6, 1967)

On June 16, 1966, Texas Gas Pipe Line Corporation (Applicant) filed in Docket No. CP66–418 an application as supplemented on July 22, 1966 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of certain natural gas facilities and the transportation and sale of natural gas, all as more fully set forth in the application and an offer of settlement related thereto which was filed November 8, 1966.

The purpose of the instant application is to realign the properties and service of Union Texas Petroleum, a Division of Allied Chemical Corporation (Union Texas) and Applicant, so that Applicant will own and operate the transportation facilities required to make sales and deliveries in interstate commerce to Transcontinental Gas Pipe Line Corporation (Transco) and Texas Eastern Transmission Corporation (Texas Eastern). Union Texas, an independent producer, will continue to gather and process gas and will make deliveries to Applicant at the outlet of Union Texas's Winnie Plant and at other points on Applicant's line in or near the North Port Neches Field in Orange County, Texas.

Applicant proposes to acquire, by assignment from Union Texas, those contracts under which gas is purchased for resale to Texas Eastern. Applicant also seeks authority to acquire facilities owned and operated by Union Texas for the purpose of transporting natural gas from the Winnie Plant to Texas Eastern and to Applicant, and to operate such facilities to enable Applicant to continue the sales to Texas Eastern and Transcontinental.

The facilities and contracts to be acquired by Applicant are stated to be:

(1) approximately 30 miles of 10-inch and 12-inch line commencing at the outlet of the Winnie Plant and running in an easterly direction through Jefferson and Orange Counties in the State of Texas to a point of interconnection with the facilities of Applicant near North Port Neches, together with meters and other appurtenant facilities.

(2) approximately 6 miles of 10-inch and 12-inch line commencing at the Winnie Plant and extending in a northerly direction to a connection with the facilities of Texas Eastern in Jefferson County, Texas together with meters and other appurtenant facilities.

(3) dehydration facilities at the Winnie Plant and adjacent to Applicant's Orange Compressor Station, and

(4) certain gas purchase contracts all as more fully described in the application.

Contingent upon approval of Applicant's proposal to acquire and operate the facilities used to serve Texas Eastern, Union Texas seeks authorization in Docket No. CI66–1296 to abandon its sale to Texas Eastern as authorized in Docket No. G–8048.

As a result of the acquisition, Applicant proposes to eliminate the dedicated gas service now rendered to Transco under its Rate Schedule DGS–1 and to Texas Eastern under Union's Rate Schedule 66, and provide service to both customers under new rate schedules not based on dedication of specific gas reserves or gas purchase contracts to particular customers. The terms and conditions of such service will be substantially the same as present, however, the respective rates will be as follows:

| Customer | Rate Schedule (Proposed) | Rate/Mcf | |
|---|---|---|---|
| | | Present | Proposed |
| Transco | CD–1 Demand Charge Commodity Charge | 80¢<br>15.91¢ | 75¢<br>15.75¢ |
| Texas Eastern | G–1 (Union R.S. 66) | 14.4¢ | 16.2¢ |

Other proposed changes in rates and service stemming from the subject acquisition are:

| Service | | Rate | |
|---|---|---|---|
| Present | Proposed | Present | Proposed |
| Gathering by Union Texas of gas purchased by Applicant for Transco—delivery at N. Port Neches. | Gathering by Union Texas of gas purchased by Applicant for Transco & Texas Eastern—delivery into Applicant's facilities. | 2.5¢/Mcf | 1.3¢/Mcf.[1] |
| Gathering and delivery by Union Texas of gas purchased by Texas Eastern. | Same, except that gas will be delivered by Applicant for Union Texas's account. | None | 0.5¢/Mcf to be paid by Union Texas for transportation by Applicant. |

[1] In return Applicant will receive an allowance for Btu loss, shrinkage and fuel use incurred in the operation of the plant. Copies of the agreement for this arrangement will be filed to supersede the contract whereby Union Texas presently performs such services for Applicant under its Rate Schedule No. 70.

The total estimated cost of acquiring the proposed facilities is $714,371 which cost will be financed from current working funds. Applicant proposes to record the acquired properties on its books at the original cost of $1,071,468, less depreciation of $473,336, with the difference between cost of acquisition and book value to be amortized over a 10-year period.

Neches, Clegg & Hunt, and Reserve have filed offers of settlement in their respective dockets in which they seek (contingent upon Commission approval of Applicant's proposal) termination of the suspension proceedings in accordance with the Commission's Second Amendment to its Statement of General Policy No. 61-1, 24 FPC 1107. Acceptance of the offers will reduce their total annual revenues approximately $106,750, based on currently effective rates but would increase total annual revenues approximately $243,350 from the underlying accepted rates.

The following tabulation reflects the details thereof:

| FPC Gas Rate Schedule and Supp. No. | Docket No. | Effective Date | Rates[1] | | |
|---|---|---|---|---|---|
| | | | Approved | Suspended | Settlement |
| Neches sale: 1-7 | RI63-193 | 11- 5-63 | 10.096 | 16.66584 | 15.0 |
| Clegg & Hunt sale: 5-1 | RI60-405 | 11-25-60 | 13.6 | 17.38982 | 15.0 |
| Reserve sales: | | | | | |
| 1-1 | G-18570 | 11- 4-59 | 13.6 | 14.6 | 14.6 |
| -2 | RI64-789 | 12- 2-64 | | 15.6 | |
| 2-1 | G-18570 | 11- 4-59 | 13.38069 | 14.38069 | 14.6 |
| -2 | RI64-789 | 12- 2-64 | | 15.38069 | 14.6 |

[1] Cents per Mcf at 14.65 psia, inclusive of tax reimbursement.

In return for permitting life-of-contract settlement rates of 15.0¢, Neches and Clegg & Hunt propose to eliminate all future price escalation provisions from the subject contracts while Reserve proposes to eliminate present price escalation provisions, including price redetermination provisions, and to substitute prices of 14.6¢ with 1.0¢ periodic price escalations commencing on June 1, 1969, and every 5-year period thereafter. All of these settlement rates will be subject to three-fourths reimbursement of future tax increases. The remaining contract terms for these four sales exceed the 5-year requirement of Commission Order No. 284, 32 FPC 422.

Petitions to intervene were filed by Transco, Texas Eastern and five major customers of Texas Eastern.[1] Subsequently, a conference was called by Applicant on October 25, 1966, at which agreement was reached by Applicant and the interveners on the basis of the subject offer of settlement. All of the interventions were then withdrawn, except for Long Island Lighting Company (LILCO), which filed a qualified withdrawal of its petition to intervene.

LILCO states it does not oppose the requested certificate, as amended by the offer of settlement, but believes that the conversion from the present producer sale by Union Texas to Texas Eastern to a pipeline sale by Applicant to Texas Eastern is wrong both as a matter of principle and of precedent. It is Long Island's position that the appropriate area rate should apply at the points of sale to Transco and Texas Eastern, regardless of which party, Union Texas or Applicant, owns the facilities from which the sales are made. LILCO, however, withdraws its opposition predicated on the understanding that:

(1) approval of the subject settlement will not be binding or persuasive in the disposition of similar situations elsewhere,

(2) approval of the settlement will not determine the point on Union-Applicant's facilities at which area rates for producer sales to pipelines should apply.

It is noted that Applicant in its Offer of Settlement filed on November 8, 1966, states that issuance of a certificate of public convenience and necessity consistent with the terms of the Offer of Settlement will not constitute a determination of any principle or issue binding on any party, nor is any party precluded or prejudiced from asserting or proving any matter or contention in any other proceeding relating to Applicant or any other party. In view of the apparent resolution of controversial matters to the satisfaction of all parties concerned it appears that there is no objection to the proposed settlement. It appears to be in the public interest that the Offer of Settlement filed by Applicant in Docket No. CP66–418 be accepted, a certificate of public convenience and necessity be issued to the Applicant as requested, and that Union Texas should be granted authorization to abandon the facilities and service proposed in Docket No. CI66–1296.

It further appears to be in the public interest to approve the Offers of Settlement filed by the producers, Neches, Clegg & Hunt and Reserve in Docket Nos. RI63–193, RI60–405, G–18570 and RI64–789, respectively, to be effective prospectively from the date of issuance of this order as provided herein. In view of the outstanding suspension proceedings in Docket No. RI62–250 pertaining to Union Texas' present sale to Texas Eastern, which is unaffected by the abandonment authorization granted herein, we shall not terminate the suspension proceedings related to the producer sales to Union Texas for the period prior to the issuance of this order. Such matters shall be resolved in the Texas Gulf Coast Area Rate Proceeding, Docket No. AR64–2, with which these proceedings have been consolidated. Accordingly, both Union Texas in Docket No. RI62–250 and the producers in Docket Nos. RI60–405, G–18570, RI63–193 and RI64–789 will retain their potential refund obligations for the period prior to this order.

After due notice, no petitions to intervene other than those referred to, notice of intervention or protest to the granting of the applications have been filed.

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[1] Brooklyn Union Gas Company, Long Island Lighting Company, Philadelphia Electric Company, Public Service Electric and Gas Company and the Philadelphia Gas Works Division of United Gas Improvement Company.

At a hearing held on June 1, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and settlement offers in the subject dockets, submitted in support of the authorizations sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Texas Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1954, in Docket No. G-2405 (13 FPC 1653).

(2) Union Texas Petroleum, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The proposed acquisition, and operation of facilities, and the sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application in Docket No. CP66-418 filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed acquisitions and operation of facilities and the sale of natural gas in interstate commerce, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities proposed to be abandoned by Union Texas as hereinbefore described and as more fully described in the application, in Docket No. CP66-1296 filed in these proceedings are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The proposed abandonment of the aforesaid facilities by Union Texas is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(7) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter in Docket No. CP66-418 and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d)(1), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Texas Gas Pipe Line Corporation, authorizing the acquisition and operation of facilities, and the sale of natural gas as hereinbefore described all as more fully described in the application, upon the terms and conditions of this order, effective as of the date of issuance of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (d)(1), (d)(2), (d)(3), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The acquisitions authorized shall be completed and the facilities placed in operation hereunder, and the sale of natural gas authorized in paragraph (A) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 3 months of the date on which this order issues.

(D) The Offer of Settlement filed by Applicant in Docket No. CP66–418 is approved.

(E) Applicant, Texas Gas Pipe Line Corporation, shall make appropriate rate filings in accordance with the Commission's Regulations reflecting the sales and services authorized herein within 30 days of the issuance of this order.

(F) Permission for and approval of the abandonment by Union Texas of the facilities hereinbefore described, as more fully described in the application in this proceeding is granted, effective as of the date of this order.

(G) The Officers of Settlement filed by Neches, Clegg & Hunt, and Reserve in their respective dockets (suspension proceedings), as modified herein are approved.

(H) The certificate issued to Union Texas in Docket No. G–8048 is terminated, Union Texas Rate Schedule No. 66 is cancelled, and the related rate filing, designated as Supplement No. 19 thereto is accepted for filing to be effective as of the date of issuance of this order.

(I) Neches, Clegg & Hunt and Reserve shall within 30 days of the issuance of this order file as supplements to their respective rate schedules, notices of changes in rates reflecting the applicable settlement rates and executed contract amendments as provided for in the subject offer. The notices of change and contract amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(J) Neches, Clegg & Hunt, and Reserve shall retain revenues attributable to the rates which have been collected subject to refund by these producers for the period prior to the date of the issuance of this order and such refund amounts shall remain subject to refund in Docket Nos. G–18570, RI60–405, RI63–193 and RI64–789.

(K) Upon notification by the Secretary of the Commission that they have complied with the terms and conditions of this order the settlement rates proposed by Neches, Clegg & Hunt, and Reserve shall be effective as of the date of this order.

(L) Union Texas shall file, as a supplement to its Rate Schedule No. 70, copies of the gathering and processing agreement as mentioned above.

(M) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Applicant, Union Texas, Neches, Clegg & Hunt, Reserve, the Commission staff, or any affected party hereto in any proceedings now pending, or hereafter instituted, including area rate or similar proceedings by or against the above-named parties, or any other companies, persons or parties affected by this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A Carver, Jr.

## TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP67-251

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued June 6, 1967)

On March 6, 1967, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP67-251 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon by sale to Indiana Gas and Water Company, Inc. (Indiana) 3.968 miles of 4-inch pipeline, together with Applicant's right title and interest in and to certain agreements of right-of-way and permits, all as more fully set forth in the application.

Applicant seeks permission and approval to abandon by sale 3.968 miles of 4-inch pipeline located in Putnam County, Indiana, commencing at Applicant's Greencastle Check Meter Station and running generally northwest to its Greencastle Sales Meter Station near the south city limits of Greencastle, Putnam County, Indiana. Applicant states that the pipeline is used exclusively to serve Indiana, and that Indiana wants to purchase the pipeline for incorporation into its own system. The sale price for the facilities is $23,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on June 1, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1948, Docket No. G-855 (7 FPC 213).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application filed in the proceeding, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(4) It is appropriate in the administration of the Natural Gas Act that Applicant file a revised service agreement reflecting the change in delivery point resulting from the abandonment of facilities authorized herein.

*The Commission orders:*

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(C) Applicant shall file a revised service agreement reflecting the change in delivery point resulting from the abandonment authorized in paragraph (A) above.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP67-238

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 7, 1967)

On February 24, 1967, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP67-238 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1967 and the operation of natural gas facilities for the sale of natural gas to direct consumers and existing distributors for resale and for miscellaneous rearrangements, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct a maximum of 8 lateral or loop lines of up to 6-inch diameter pipe with the maximum length being 15 miles and a maximum of 11 taps and meters in order to transport and sell natural gas, previously authorized under certificates for transportation or sale to existing distributors at rates on file with the Commission, for resale in existing market areas, and in order to deliver natural gas to direct consumers located in areas outside the franchise area of any local distributor. Applicant also proposes to construct a maximum of 2 lateral or loop lines of up to 10-inch diameter pipe with the maximum length being 3 miles and a maximum of 2 taps and meters in order to accomplish miscellaneous rearrangements of its facilities.

The deliveries to any one distributor or consumer by means of the proposed facilities will not exceed 100,000 Mcf per year and none of the gas delivered will be used by any distributor or consumer for boiler fuel purposes as defined by the Commission in Section 157.7(c) of its Regulations under the Act.

The total estimated cost of the proposed facilities will not exceed a maximum of $190,000, which cost will be financed with internally generated funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 1, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946 in Docket Nos. G-220 and G-402 (5 FPC 64).

**(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.**

**(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.**

**(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.**

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $190,000, with the total deliveries to any one distributor or consumer not to exceed a maximum of 100,000 Mcf of natural gas per year and with the gas not to be used for boiler fuel purposes.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

**(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.**

*The Commission orders:*

**(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Montana-Dakota Utilities Co., to construct during the calendar year 1967 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct consumers and to distributors for resale and for miscellaneous rearrangements as hereinafter provided.**

**(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.**

**(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1967 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $190,000, with the total deliveries to any one distributor or consumer limited to a maximum of 100,000 Mcf of natural gas per year and with the gas not to be used for boiler fuel purposes.**

**(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with**

Section 157.(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations, and, further, shall not entitle any industrial customers to whom firm deliveries may be authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(F) The certificate issued is granted on the express condition that any interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## REPORTS BY NATURAL GAS COMPANIES OF CURTAILMENTS OF SERVICE TO INDUSTRIAL CUSTOMERS, DOCKET NO. R-321

### ORDER NO. 344-A

### AMENDING § 260.1(c) OF THE COMMISSION'S REGULATIONS

(Issued June 7, 1967)*

Order No. 344, issued in this proceeding on May 2, 1967 (37 FPC 838, 32 F.R. 7051), revised the supplementary schedule 520A to Annual Report FPC Form No. 2 by, among other things, changing the heading of the schedule to "Curtailments of Field and Main Line Industrial Customers". Since paragraph (c) of §260.1 lists the headings of the schedules contained in the Report form, it should have been amended so as to correctly list the revised heading of the schedule. We are here supplying the inadvertent omission.

*The Commission finds:*

Notice of this amendment prior to adoption is unnecessary and good cause exists for making it effective immediately.

*The Commission*, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), ***orders:***

(A) Section 260.1(c), Subchapter G, Chapter I of Title 18 of the Code of Federal Regulations, is amended by revising the line "Curtailments of Main Line Industrial Customers" therein appearing to read:

"Curtailments of Field and Main Line Industrial Customers".

(Secs. 10, 16; 52 Stat. 826, 830; 15 U.S.C. 717i, 717o)

(B) The amendment here adopted shall be effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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*Published in the Federal Register on June 14, 1967 (32 F.R. 8522).

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PUBLIC INFORMATION—STANDARDIZED CONDITIONS AS TO PRELIMINARY PERMITS OR LICENSES FOR HYDRO-ELECTRIC DEVELOPMENTS, DOCKET NO. R-325

### ORDER NO. 348

### STATEMENT OF GENERAL POLICY PROVIDING CITATIONS TO L-FORMS

(Issued June 7, 1967)*

From time to time the Commission adopts sets of standardized conditions for inclusion in given classes of preliminary permits or licenses issued under Part I of the Federal Power Act. For ease of reference the sets are designated as "Forms" and although they are not binding regulations, and may be departed from in particular cases, the Commission normally adheres to them, as a matter of general policy, in issuing subsequent permits or licenses in similar circumstances. In order that the public be advised of these policies, the Commission publishes and disseminates the orders prescribing such forms when issued and includes them in the printed volumes of the FPC Reports. It is also necessary and appropriate in the administration of the Federal Power Act and the Administrative Procedure Act to facilitate convenient public reference to such forms by listing the forms and their citations in the rules and regulations of the Commission which are codified in the Code of Federal Regulations.

Accordingly, the Commission *orders:*

Part 2, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding the following new section:

§ 2.9 Conditions in preliminary permits and licenses—list of and citations to "P-" and "L-" Forms.

The Commission has approved several sets of standard conditions for normal inclusion in preliminary permits or licenses for hydroelectric developments. In a special situation, of course, the Commission in issuing a permit or license for a project will modify or eliminate a particular article (condition). For reference purposes the sets of conditions are designated as "Forms"—those for preliminary permits are published in Form P-1, and those for licenses are published in Form L's. There are different Form L's for different types of licenses, and the forms have been revised from time to time. Thus at any given time there will be several series of standard forms applicable to the various vintages of different types of licenses. The forms and their revisions are published in the Federal Power Commission Reports and citations thereto are listed below.

New or revised forms may be approved after preparation of this list (which is up to date as of May 25, 1967) and consequently do not appear herein. Any forms currently in use, including those which have not yet appeared in the FPC Reports, may be obtained from the Office of Public Information, Federal Power Commission, 441 G Street, N.W., Washington, D.C. 20426.

Within each of the categories, the last-listed form is the one in use at the date of preparation of the list. The dates in the list are the issuance date of the license order with which the particular form was first published in the FPC Reports.

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*Published in the Federal Register on June 14, 1967 (32 F.R. 8521).

P-1: Preliminary Permit for Project
11 FPC 699 (December 2, 1952)
16 FPC 1303 (December 4, 1956)

L-1: Constructed Major Projects Affecting Lands of the United States
12 FPC 1262 (September 25, 1953)
32 FPC 71 (April 1, 1964)

L-2: Unconstructed Major Projects Affecting Lands of the United States
12 FPC 1137 (August 7, 1953)
17 FPC 62 (January 18, 1957)
31 FPC 528 (March 10, 1964)

L-3: Constructed Major Projects Affecting Navigable Waters of the United States
12 FPC 836 (February 6, 1953)
17 FPC 385 (March 4, 1957)
30 FPC 1658 (November 1, 1963)
32 FPC 1114 (October 15, 1964)
36 FPC 971 (December 6, 1966)

L-4: Unconstructed Major Projects Affecting Navigable Waters of the United States
16 FPC 1284 (November 29, 1956)
32 FPC 839 (September 21, 1964)

L-5: Constructed Major Projects Affecting Navigable Waters and Lands of the United States
12 FPC 1329 (October 23, 1953)
17 FPC 110 (January 31, 1957)

L-6: Unconstructed Major Projects Affecting Navigable Waters and Lands of the United States
12 FPC 1271 (September 29, 1953)
16 FPC 1121 (October 29, 1956)
31 FPC 284 (February 5, 1964)
34 FPC 1114 (October 7, 1965)

L-7: Minor Projects Affecting Lands of the United States
12 FPC 911 (March 30, 1953)
17 FPC 486 (April 2, 1957)

L-8: Minor-Part Projects (Transmission Line)
12 FPC 1017 (June 12, 1953)

L-9: Constructed Minor Project Affecting Navigable Waters of the United States
32 FPC 577 (August 10, 1964)

L-10: Constructed Major Projects Affecting the Interests of Interstate or Foreign Commerce
37 FPC 860 (May 9, 1967)

L-11: Unconstructed Major Projects Affecting the Interests of Interstate or Foreign Commerce
34 FPC 602 (August 26, 1965)
36 FPC 687 (September 26, 1966)

L-12: Constructed Minor Projects Affecting the Interests of Interstate or Foreign Commerce
35 FPC 875 (June 3, 1966)

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7351

### SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued June 8, 1967)

By order issued May 31, 1967, 37 FPC 1000, in the above-entitled matter, the Commission authorized Iowa Southern Utilities Company, (Applicant), to issue and sell at competitive bidding $8,000,000, principal amount of First Mortgage Bonds, due 1997, subject, among other, to the provisions set forth in paragraph (B) of that order as follows:

> (B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:
>
> (i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.
>
> (ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant on June 8, 1967, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Francis I. duPont, A. C. Allyn, Inc., to purchase the proposed issuance of $8,000,000, principal amount of Bonds, for the price of 98.571% of principal amount, with an interest rate of 6⅛%, resulting in a cost of money to the Applicant of 6.23%

*The Commission finds:*

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued May 31, 1967, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

*The Commission orders:*

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D), and (E) of the Commission's order issued May 31, 1967, in the above docket.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## PHILLIPS PETROLEUM COMPANY (OPERATOR), DOCKET NO. G-3244, ET AL.

### ORDER DENYING REHEARING

(Issued June 9, 1967)*

On May 10, 1967, Phillips Petroleum Company (Phillips) filed in Docket No. G-3244, *et al.*, an application for rehearing of the order issued in said docket on April 14, 1967, insofar as said order amended the orders issuing certificates in Docket Nos. G-3244, CI65-273 and CI65-624 by authorizing the sales of additional volumes of natural gas and issued a certificate in Docket No. CI66-905 authorizing the sale of natural gas. Each authorization is for the sale of residue gas to El Paso Natural Gas Company from the Permian Basin area of Texas or New Mexico.

Prior to the issuance of the subject authorizations Phillips advised the Commission[1] that it would accept a certificate and certificate amendments at the applicable area rates reflected in its rate schedule-quality statements "or such other rate or rates as may be determined to be applicable to such sales pursuant to a final order entered by the Commission in accordance with the remand of Opinion Nos. 468 and 468-A, 34 FPC 159, 1068, by the U.S. Court of Appeals for the Tenth Circuit, or other judicial review." The order of April 14, 1967, provides that the initial rates for the subject sales "shall be the applicable base area rates prescribed in Opinion No. 468, as modified by Opinion No. 468-A, as adjusted for quality, or the contract rates, whichever are lower; and no increases in rate in excess of said initial rates shall be filed before January 1, 1968."[2] The tabulation in the order of April 14, 1967, noted that "Applicant has agreed to accept authorization for additional volumes pursuant to Opinion No. 468."[3]

In its application for rehearing Phillips submits that it did not agree to accept authorization pursuant to Opinion No. 468, that the Commission has ignored the court's remand of said opinion and stay of the effectiveness of the rates and that Phillips will be deprived of any possibility of collecting higher rates during the moratorium period even though the final order in Docket No. AR61-1, *et al.*, may determine just and reasonable rates in excess of those rates prescribed in Opinion No. 468. Phillips also claims it is entitled to the same relief granted certain small producers in an order issued February 6, 1967, in *Rodman and Late, et al.*, Docket No. CS66-48, *et al.*, 37 FPC 281. Phillips requests that the order of April 14, 1967, be amended by deleting therefrom the condition that no increases in rate shall be filed before January 1, 1968, or in the alternative, that it be permitted to collect current contract rates subject to refund to the extent that such rates are in excess of the rates finally to be determined in Docket No. AR61-1, *et al.*

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*Reconsideration denied by order issued July 31, 1967, 38 FPC 221.

[1] Letters dated January 25, 1967, with respect to the sales proposed in Docket Nos. G-3244, CI65-273 and CI65-624 and letter dated January 27, 1967, with respect to the sale proposed in Docket No. CI66-905.

[2] Mimeo., p. 6, para. (E).

[3] Mimeo., pp. 9, 13 and 14.

In our order issued March 4, 1966, denying applications for rehearing of Opinion No. 484 (*El Paso Natural Gas Company, et al.*, Docket No. CP64–211, *et al.*) we stated (35 FPC 321, 322):

> Nine producers[2] urge that the stay granted by the Circuit Court of Appeals for the Tenth Circuit of the ordering provisions of Opinion No. 468 should prevent the Commission from applying the price levels established in Opinion No. 468 to determine the in-line initial prices in these certificate proceedings. We think that the applicable area rates established by the Commission after lengthy hearings and the opportunity for full presentations by all interested parties are the best present indication of the proper in-line prices in the area, even though these area rates are subject to court review. We do not think that the public convenience and necessity requires the issuance of certificates at prices in excess of the area rates. [Footnote omitted].

That reasoning is equally applicable here. In view of the petitions for certiorari by the Commission, as well as other parties, which are pending in the Supreme Court, it would not be appropriate at this time to adhere to the Tenth Circuit's remand of the *Permian* decision.

There is also no justification for removing the moratorium provision from the subject certificates. We have refused consistently to waive moratoriums in temporary certificates to permit rate filings in the *Permian* area above the applicable area just and reasonable ceiling prescribed in Opinion No. 468.[4] We have also imposed the same type of moratorium involved here in issuing permanent certificates (Opinion No. 484, 35 FPC 40, 47).

In the *Rodman* order, a policy was adopted by the Commission of granting relief to small producers from certain provisions in their small producer certificates so as to allow them to collect, subject to refund, rates in excess of the applicable area base rate ceiling determined in Opinion No. 468. The basic purpose of that order was to place small producers in the same position with respect to *existing sales* as other producers in *Permian*, thus encouraging those which had small producer certificates to retain them and those which were eligible for such a certificate, but had not yet applied for one, to acquire one. Unlike Phillips, which has no certificate authorization except for the certificate authorization involved here to which it objects, the small producers in the *Rodman* order were making sales pursuant to unconditioned temporary or permanent certificate authorization. These producers thus were in a position to collect, albeit subject to refund, above ceiling rates pending completion of judicial review in *Permian* in the absence of a small producer certificate. Since Phillips is proposing to make new sales and has no outstanding certificate authorization, it is clear that the rationale of the *Rodman* order is not applicable here.

The subject permanent certificates were issued to Phillips under the shortened hearing procedure on the assumption that the terms and conditions thereof should be acceptable to it in view of its letters of January 25 and 27, 1967. It now appears that we were mistaken. Phillips in any event is free to accept or reject the certificates as tendered.[5] However, if Phillips wishes to operate on the basis of a permanent certificate it must do so pursuant to the reasonable conditions we have imposed. In the alternative, it may reject these certificates, and instead await a formal hearing as to the proper initial rate in these dockets.

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[4] *Sun Oil Company*, order issued October 21, 1965 (undocketed, 34 FPC 1195); *Union Oil Company of California*, Docket No. CI65–683, order issued December 20, 1965, 34 FPC 1505; and *Sohio Petroleum Company*, Docket No. G–17012, order issued June 6, 1966, 35 FPC 900.

[5] If Phillips has commenced service under these certificates, it may not properly reject these certificates now.

*The Commission finds:*

The assignments of error and grounds for rehearing set forth no new facts or principles of law which either were not fully considered by the Commission when it issued the order in Docket No. G–3244, *et al.*, or which, having now been considered, warrant any amendment of said order.

*The Commission orders:*

The application for rehearing filed on May 10, 1967, in Docket No. G–3244, *et al.*, by Phillips Petroleum Company is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## BLANCO OIL COMPANY, ET AL., DOCKET NO. G–20402, ET AL.[1] AND KILLAM & HURD, DOCKET NO. CI61–626

### ORDER DENYING OFFER OF SETTLEMENT

(Issued June 12, 1967)

On March 29, 1967, Blanco Oil Company, *et al.* (Blanco) and Killam & Hurd submitted a joint offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves four sales of natural gas made by Blanco, and one made by Killam & Hurd.

Docket Nos. G–20402 and RI64–767 involve proposed rate increases filed by Blanco from an initial rate of 10.5¢ to 15.5¢ and 16.7228¢ per Mcf. Each increase was suspended for the statutory period and placed in effect, subject to refund. This sale is made under Blanco's FPC Gas Rate Schedule No. 6 in the Ingham (Devonian) Field, Crockett County, Texas (Texas Railroad District No. 7(c)) to El Paso Natural Gas Company. Blanco proposes to reduce the currently effective rate of 16.7228¢ per Mcf to 14.5¢ per Mcf which is the rate found to be just and reasonable in the Commission's Opinion No. 468 in the Permian Area Rate Proceeding, Docket No. AR61–1, 34 FPC 159.[2]

Docket Nos. CI61–618 and CI61–626 involve sales of natural gas made by Blanco and Killam & Hurd to Natural Gas Pipeline Company of America in the Northeast Thompsonville Field, Webb and Jim Hogg Counties, Texas (Texas Railroad Commission District No. 4). The sales are made under Blanco's and Killam & Hurd's FPC Gas Rate Schedule Nos. 9 and 1, respectively. The initial rate for these sales was 18¢ per Mcf of natural gas under temporary certificates granted without specific refund conditions. On September 30, 1965, the

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[1] The other proceedings involved herein affecting Blanco alone are Docket Nos. RI64–350, RI64–767 and RI66–116 and Blanco Oil Company (Operator), *et al.* in Docket No. CI61–618.

[2] Docket No. G–20402 was consolidated in the *Permian* proceeding, and Docket No. RI64–767 was included in the Commission's show cause order, 34 FPC 424, issued with Opinion No. 468. Blanco has not filed a quality statement nor has it applied for a small producer certificate under Order No. 308, 34 FPC 1202.

Commission issued its Opinion No. 478 in *Turnbull & Zoch Drilling Co. (Operator), et al.*, Docket No. G-17960, *et al.*, 34 FPC 1001, wherein it found the proper initial rate for these sales to be 15¢ per Mcf of natural gas. Blanco and Killam & Hurd propose settlement rates of 15¢ from the date of issuance of this order. On May 24, 1967, the Commission's initial rate determination in Opinion No. 478 was affirmed by the United States Court of Appeals for Fifth Circuit in *Continental Oil Company, et al.* v. *F.P.C.* (Nos. 23188, *et al.*). The Court also held that the Commission had the power to order refunds of amounts collected above the in-line rate where equitable considerations made it appropriate to do so.

Docket No. RI64-350 involves a sale of natural gas by Blanco under its FPC Gas Rate Schedule No. 3 to Tennessee Gas Pipeline Company in the Heyser Field, Calhoun County, Texas (Texas Railroad Commission District No. 2). Blanco is presently charging and collecting 18¢ per Mcf of natural gas, subject to refund under Section 4(e) of the Natural Gas Act and proposes a settlement rate of 15¢ per Mcf for this sale. Blanco and Killam and Hurd have charged and collected approximately $497,100 above the proposed settlement rates for the sales involved herein. They propose to make no refunds of such monies.

Protests to the proposal and comments have been filed by the Public Utilities Commission of the State of California and The People of the State of California, Brooklyn Union Gas Company, Public Service Electric and Gas Company and Consolidated Edison Company of New York. The protests in the main center on the fact that Blanco and Killam & Hurd propose to make no refunds, and that in only one instance, the sale to Natural Gas Pipeline Company of America, do they propose a moratorium on increased rates. That moratorium period was set forth in the Commission's Opinion No. 478, and has been affirmed by the Fifth Circuit.

Essentially, Blanco and Killam & Hurd propose to charge prospectively the just and reasonable rate found by the Commission in Permian without making any of the refunds required by the order in that proceeding. We recognize that this refund order is still the subject of court review. They further propose to charge prospectively the rates found to be in-line in Texas District No. 4 without making any refunds which the Fifth Circuit has decided that we have power to order. This latter decision may also be subject to further court review. A similar proposal involving the sale in Texas District No. 2 would be without refunds although any refund obligation has been incurred under Section 4 of the Natural Gas Act rather than Section 7. In these circumstances, approval of the settlement proposal would not be in the public interest. It may be noted, however, that Blanco could file a proposal under its FPC Gas Rate Schedule Nos. 3 and 4 in accordance with the provisions of the Second Amendment to the Statement of General Policy No. 61-1, 18 CFR 2.56, as amended.

*The Commission finds:*

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to deny Blanco's and Killam & Hurd's joint offer of settlement filed with the Commission on March 29, 1967.

*The Commission orders:*

The joint offer of settlement filed by Blanco and Killam & Hurd on March 29, 1967, in these proceedings, is hereby denied.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## CITIES SERVICE GAS COMPANY, DOCKET NO. CP67-67

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ORDER TERMINATING FORMAL PROCEEDING

(Issued June 12, 1967)

On September 19, 1966, Cities Service Gas Company (Applicant) filed in Docket No. CP67-67, as amended on March 10, 1967, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Greene County, Missouri, and to sell and deliver natural gas to The Gas Service Company (Gas Service) for resale and distribution in and about the cities of Ash Grove, Walnut Grove and Willard, Missouri, all as more fully set forth in the application, as amended, in this proceeding.

The estimated third year peak day annual natural gas requirements of the three communities are 1,387 Mcf and 108,500 Mcf, respectively. The proposed sale of gas to Gas Service will be made pursuant to Applicant's FPC Gas Rate Schedules F-2, C-2 and I-2.

Specifically, by its amended application, Applicant proposes to construct and operate a 4-inch lateral line extending 7.07 miles from Applicant's existing 16-inch pipeline, together with measuring and regulating facilities, in Greene County. The total estimated cost of these facilities is $120,000, which cost will be financed from cash on hand.

The original application in this proceeding was noticed on September 27, 1966 (31 F.R. 12975). Several petitions to intervene were filed herein, and, subsequently, by order issued January 25, 1967 (32 F.R. 2399) this matter was set for formal hearing to commence on March 6, 1967. At the hearing on March 6, 1967, the presiding examiner suspended the hearing until further notice to give Applicant an opportunity to amend its application. On March 10, 1967, Applicant filed its amendment, and on March 15, 1967 (32 F.R. 4476) notice of said amendment was issued providing, among other things, that interveners allowed in the proceeding on the original application would not be carried over to the amended application and that such interveners would have to file new petitions if they desired to intervene in the proceeding on the amended application. The notice of March 15, 1967, also provided that upon review by the Commission and in the event no protest or petition to intervene in opposition to the amended application was timely filed, said amended application would be disposed of pursuant to the statutory hearing procedure. No petition to intervene in opposition, notice of intervention or protest to the granting of the amended application having been filed, the amended application shall be disposed of pursuant to the statutory hearing procedure and the formal proceeding in this docket shall be terminated.

At a hearing held on June 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas

company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943 in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) The construction of the facilities hereinafter authorized should be delayed pending receipt of appropriate authorization by Gas Service from the State of Missouri.

(7) The formal proceeding in this docket should be terminated as of the date this order issues.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as amended, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 12 months from the date on which this order issues.

(D) The construction of the facilities hereinabove authorized shall be delayed pending receipt of appropriate authorization by The Gas Service Company from the State of Missouri.

(E) The formal proceeding in this docket is terminated as of the date this order issues.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP67-290

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 12, 1967)

On April 7, 1967, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP67-290 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction and operation of miscellaneous gas sales and transportation facilities during the period extending from June 1, 1967 through May 31, 1968, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to construct and operate various gas meter stations and mainline or lateral taps, for direct sales to consumers and for sales to existing resale customers. Applicant also seeks authorization to construct and operate various miscellaneous rearrangements of its existing pipeline system.

Applicant states the total estimated cost of the proposed construction will not exceed $300,000, with no single project to exceed a total cost of $50,000, and will be defrayed from current funds.

Applicant seeks authorization to construct and operate the following:

|  | Maximum Number | Maximum Costs |  |
|---|---|---|---|
|  |  | Single Project | All Projects |
| New delivery points | 10 | $25,000 | $100,000 |
| Lateral lines (up to 10-inch dia. 5 miles in length) | 5 | 50,000 | 100,000 |
| Miscellaneous rearrangements (up to 26-inch dia. 1 mile length) | 5 | 50,000 | 100,000 |
| Total | 20 |  | 300,000 |

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945 in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application, in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the 12 month period extending from June 1, 1967 to May 31, 1968. The total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, to construct during the 12 month period extending from June 1, 1967 to May 31, 1968, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the 12 month period extending from June 1, 1967 to May 31, 1968. The total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, shall not entitle direct customers to whom deliveries are authorized herein to any priorities or rights to additional gas at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## WILLIAM E. MCCOMMONS, D/B/A MCCOMMONS EXPLORATION COMPANY, ET AL., DOCKET NO. RI63-281

### ORDER DENYING MOTION FOR RECONSIDERATION

(Issued June 12, 1967)

William E. McCommons, d/b/a McCommons Exploration Company, *et al.* (McCommons) filed on May 8, 1967, a motion for reconsideration of the Commission's order issued January 30, 1967, 37 FPC 258, in the above-entitled proceeding. By that order the Commission denied McCommons' motion to terminate Docket No. RI63-281 and to relieve him of a potential refund obligation therein of approximately $54,000. The proceeding involves an increase from 11.9789¢ to 22.8829¢ per Mcf for a sale by McCommons to United Gas Pipe Line Company from Mississippi under his FPC Gas Rate Schedule No. 1. The last sale was made on April 8, 1966.

The Commission in its January 30 order denied McCommons' motion without prejudice to its resubmittal after the just and reasonable rate for the subject sale has been determined in an appropriate area proceeding. It was there determined that resolution of the question as to special relief should await conclusion of the area rate proceeding. Subsequent to the issuance of the January 30 order, an area rate proceeding in Docket No. AR67-1, *et al.* (Other Southwest Area), which includes the area involved here, was instituted by order issued February 28, 1967, 37 FPC 400. The just and reasonable rate for McCommons' sale will be determined in that proceeding.

McCommons' motion presents no new facts or principles of law which were not fully considered by the Commission in the January 30 order, or which, having now been considered, warrant any modification of that order.

*The Commission orders:*

The motion for reconsideration filed herein by McCommons on May 8, 1967 is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## TRUNKLINE GAS COMPANY, DOCKET NO. CP67-287

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued June 12, 1967)

On April 4, 1967, Trunkline Gas Company (Applicant) filed in Docket No. CP67-287 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale certain natural gas facilities in the Hidalgo Field area, Hidalgo County, Texas, all as more fully set forth in the application.

Specifically, Applicant proposes to abandon by sale to Coastal States Producing Company (Coastal States) approximately 5,139 feet of 4-inch O.D. pipeline and two small purchase measuring stations. Said facilities were installed by Applicant to receive into its system natural gas purchased from American Petrofina Company of Texas, *et al.*, (American) in the Hidalgo Field area. Applicant and American have entered into an agreement, dated November 16, 1966, providing for a change in delivery points; by Commission order issued February 15, 1967, in Docket No. CI61-672 said change was authorized. Accordingly, Applicant states that it will no longer need or require the facilities to be abandoned.

Coastal States will pay Applicant $12,000 for the subject facilities, which amount, Applicant states, is the approximate depreciated cost of such facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949 in Docket No. G-882 (8 FPC 250).

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## CITIES SERVICE GAS COMPANY, DOCKET NO. CP63-188 (PHASE II)

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1967)

On April 10, 1967, Cities Service Gas Company (Petitioner) filed in Docket No. CP63-188 (Phase II) a petition to amend the order issued by the Commission December 30, 1963, 30 FPC 1612, as amended October 15, 1964 and November 1, 1965, 34 FPC 1209, so as to authorize an increase in the maximum operating storage pressure in Webb Storage Field, Grant County, Oklahoma, and to acquire gas storage leasehold interests in 240 acres located adjacent to leasehold interests previously authorized for acquisition in Webb Field, at an estimated cost of $24,000, all as more fully set forth in the petition to amend.

In the order of December 30, 1963, the Commission authorized Petitioner to construct, acquire, and operate certain facilities and to acquire certain leasehold interests and gas reserves in order to develop and operate an underground gas storage field, the Webb Gas Field, located in Grant County, Oklahoma. This order was conditioned upon the maximum operating storage pressure not exceeding 1040 psia, at the wellhead.

Petitioner states that at the time of filing the original application, the production history of the Webb Field indicated a total reservoir capacity of 55,600,000 Mcf at original wellhead pressure of 1550 psig. Through the storage development period of the field, it has become evident that water encroachment has temporarily reduced the storage space within the reservoir.

Petitioner states that due to the reduction in storage space it will be unable to inject sufficient volumes of gas at the presently authorized storage pressure to meet the increased peak day demands of its existing customers.

Due notice of the filing of the petition to amend and opportunity for hearing has been given by publication in the Federal Register on April 27, 1967 (32 F.R. 5633). No protest or petition to intervene has been filed in this proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued December 30, 1963 in Docket No. CP63–188 granting Cities Service Gas Company certain certificate authorizations, be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued December 30, 1963, in Docket No. CP63–188 is further amended so as to authorize Petitioner to increase the maximum operating storage pressure in its Webb Storage Field, Grant County, Oklahoma, to 2000 psig, and to acquire natural gas storage leasehold interests in 240 acres in Grant County, Oklahoma, which is located adjacent to leasehold interests previously authorized for acquisition in the Webb Field.

(B) In all other respects said order shall remain in full force and effect.

(C) The amendment authorized by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the conditions set forth in paragraphs (f) and (g) of Section 157.20 of such Regulations.

(D) Petitioner shall submit to the Commission reports coinciding with the termination of each injection and withdrawal cycles for the next two years occurring on and after the date of this amending order. The report will show the following:

(1) the total volume of gas in the reservoir;
(2) the volumes of gas injected or withdrawn by months;
(3) the daily maximum injection and withdrawal volumes experienced during the reporting interval;
(4) the shut-in wellhead pressure for each well;
(5) the top storage pressure (wellhead and reservoir) experienced during the reporting interval;
(6) structure maps of the reservoir (when revised); and,
(7) a brief discussion of current operations.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## DUQUESNE LIGHT COMPANY, DOCKET NO. E-7331

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued June 13, 1967)

Duquesne Light Company (Applicant) filed an application on January 10, 1967 and a supplement thereto on January 27th, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the acquisition of various electric distribution facilities from the Borough of Aspinwall, Allegheny County, Pennsylvania (Aspinwall).

Applicant is incorporated under the laws of the Commonwealth of Pennsylvania and is qualified to do business in Pennsylvania and West Virginia with its principal business office at Pittsburgh, Pennsylvania. Applicant is engaged in the production, distribution and sale of electric energy in the greater parts of Allegheny and Beaver Counties, Pennsylvania.

Aspinwall operates a small municipal system serving the Borough of Aspinwall and three customers in an adjacent municipality. It owns and operates an internal combustion electric generating plant with a total capacity of 2600 kw. It is not interconnected with any other system, but generates all its own requirements. During 1965 it generated 6,865,200 kwh, sold 5,230,589 kwh to 1,261 ultimate consumers and delivered 1,651,243 kwh to public buildings and Borough facilities. Its peak load in 1965 was 1,455 kw.

Under an agreement dated October 12, 1966, Duquesne will acquire all of the electric facilities (except the power plant site, building, and generating facilities) owned by Aspinwall. Applicant has agreed to pay Aspinwall the total purchase price of $510,000 for the electric facilities covered by the agreement upon the effective date thereof.

According to the Applicant the facilities to be acquired have an estimated original cost of $212,100 and an estimated accumulated provision for depreciation of $57,100. Applicant proposes to record the estimated original cost of $212,100 in Account 101, Electric Plant in Service, the estimated accumulated provision for depreciation of $57,100 in Account 108, Accumulated Provision for Depreciation. Applicant also proposes to record an acquisition adjustment in the amount of $355,000 (the difference between the purchase price of $510,000 and the estimate of original cost less accrued depreciation) in Account 114, Electric Plant Acquisition Adjustments, and to write off this amount to Account 435, Miscellaneous Debits to Surplus.

Applicant proposes to serve Aspinwall's customers at the same rates it now charges customers in the nearby areas. According to the application, the monthly bill of the average residential customer in Aspinwall will be reduced by $1.62. The Applicant represents that a few customers, having a relatively low load factor, may possibly receive small increases because of the application of a minimum monthly charge.

According to the application, the proposed transaction will result in improved and more reliable and economical service to the electric customers of Aspinwall for the following reasons: (1) Applicant with its large generating capacity can more efficiently and economically serve the existing and growing needs of such customers; (2) by reason of its interconnections and its substantial and conveniently located resources of personnel, material and equipment, Applicant will be able to restore service promptly in case of interruption; and (3) the services of Applicant's personnel will be available to such customers to enable them to derive maximum benefits from the use of electricity.

Written notice of the application has been given to the Pennsylvania Public Utility Commission and the West Virginia Public Service Commission and to the Governor of each of those States. Notice was also published in the Federal Register on February 3, 1967 (32 F.R. 2440), stating that any person desiring to be heard or to make any protest with reference to said application should on or before February 13, 1967, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). By order dated May 1, 1967, the Pennsylvania Public Utility Commission approved the transaction.

On May 16, 1967 a letter was received from Edward J. Parker, of Aspinwall, Pennsylvania requesting us to review his brief in opposition to the sale which he made before the Pennsylvania Public Utilities Commission. We have reviewed his statement and find that the questions raised by Mr. Parker were confined to the manner in which the sale of the electric facilities was handled by the Borough Council. The Pennsylvania Public Utilities Commission in its order approving the transaction found that after careful examination of the matters involved, it was of the opinion that the transactions proposed are not adverse to the interests of the public in the Borough of Aspinwall.

The procedure to be followed by the Borough Council is governed by the laws of the State of Pennsylvania and the question of whether such laws have been complied with is a determination to be made by the Courts of the State of Pennsylvania and not this Commission.

*The Commission finds:*

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the State of Ohio and consumed in the State of Pennsylvania, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or solely for the transmission of electric energy consumed wholly by the transmitter. Applicant, therefore, is a public utility within the meaning of that term used in Section 203 of the Federal Power Act.

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Aspinwall, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SOUTH TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NO. CP67-263

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1967)

On March 14, 1967, South Texas Natural Gas Gathering Company (Applicant), filed in Docket No. CP67-263 an application, pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the period July 1, 1967 through June 30, 1968 and operation of gas purchase facilities to enable Applicant to take into its certificated pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new and existing supplies of natural gas in various producing areas adjacent to said system.

Applicant requests waiver of the cost limitations imposed by Section 157.7(b) of the Commission's Regulations under the Natural Gas Act, since its proposed total expenditures exceed such limitations, so that it may maintain its competitive position in acquiring new supplies of natural gas. The total cost of the proposed facilities will not exceed a cost of $1,000,000, with the cost of a single project limited to $250,000, which costs will be financed from cash on hand, from cash generated from normal operations and from internal sources.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, South Texas Natural Gas Gathering Company, a Delaware corporation having its principal place of business in Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as here-

tofore found by the Commission in its Opinion and order issued August 30, 1962 in Docket No. G–18907 (28 FPC 418).

(2) The facilities hereinbefore described, as more fully described in the application filed in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the period July 1, 1967 through June 30, 1968 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

(8) Good cause has been shown for waiver of the cost limitations imposed by Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, South Texas Natural Gas Gathering Company, to construct during the period July 1, 1967 through June 30, 1968, the proposed facilities hereinbefore described, as more fully described in the application filed in this proceeding, and to operate such facilities only to take natural gas into its certificated facilities from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the period July 1, 1967 through June 30, 1968, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

(E) Applicant's request for waiver of the cost limitations imposed by Section 157.7(b) of the Commission's Regulations under the Natural Gas Act is granted.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-231

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 13, 1967)

On February 17, 1967, Southern Natural Gas Company (Applicant) filed in Docket No. CP67-231 an application, as supplemented on March 22, 1967, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the sale and delivery of additional volumes of natural gas to Chattanooga Gas Company (Chattanooga), an existing customer, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to construct and operate approximately 7.9 miles of 24-inch loop pipeline on its main North Line between its Louisville and Reform Compressor Stations.

Applicant and Chattanooga have entered into a contract providing for an increase in Chattanooga's contract demand with Applicant to 37,000 Mcf, effective November 1, 1967, and to 39,000 Mcf, effective November 1, 1968. The currently effective executed service agreement between Chattanooga and Applicant provides for a contract demand of 29,000 Mcf, for the 1967-68 winter season.

The proposed facilities will permit Applicant to flow east from its Pickens compressor station on its main North Line approximately 14,000 Mcf per day of additional gas available at that location, thereby enabling Applicant to deliver the proposed additional 10,000 Mcf of contract demand gas to Chattanooga and also providing Applicant with approximately 4,000 Mcf of excess capacity.

The proposed additional volumes of natural gas will be sold to Chattanooga under Applicant's rate schedule OCD, the same rate schedule under which Applicant is presently authorized to sell gas to Chattanooga.

The total estimated cost of Applicant's proposed facilities is $791,570, which cost will be financed from cash on hand or from current operation.

After due notice, no protest, petition to intervene, or notice of intervention has been filed.

At a hearing held on June 9, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942 in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commis-

sion, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of said Regulations.

(5) The certificate hereinafter issued should be conditioned upon Applicant's filing with the Commission of an appropriate revised service agreement with Chattanooga Gas Company in accordance with the Commission's Regulations under the Natural Gas Act.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of the facilities and the transportation and sale of natural gas as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within one year from the date of this order.

(D) The certificate issued by paragraph (A) above is conditioned upon Applicant's filing with the Commission of an appropriate revised service agreement with Chattanooga Gas Company in accordance with the Commission's Regulations under the Natural Gas Act.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## GEORGIA POWER COMPANY, PROJECT NO. 2591

### ORDER ISSUING PRELIMINARY PERMIT

(Issued June 14, 1967)

Application was filed on April 29, 1966, by Georgia Power Company (Applicant) of Atlanta, Georgia, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2591, to be known as the Upper Oconee Project, to be located on the Oconee River in the Counties of Greene, Morgan, Oconee, Oglethorpe and Clark, Georgia, in the vicinity of Madison, Greensboro, and Athens, and affecting lands of the United States within the Oconee National Forest and within the Piedmont and Broad River Soil Conservation Districts, Greensboro, Georgia.

The Department of the Army and the Chief of Engineers have recommended that any preliminary permit for the project should provide that Applicant coordinate its studies of design, construction and operation with those of the District Engineer, U.S. Army Engineer District, Savannah, Georgia, in the interest of comprehensive planning for the Altamaha River Basin.

The Department of the Interior has recommended for inclusion in any preliminary permit for the project conditions in the interest of fish and wildlife resources as set forth in Article 13.

The U.S. Forest Service has advised that it has no objection to the issuance of a permit subject to the terms and conditions set forth in attached Form P-1, and to a special condition in the interest of alleviating damage to, and achieving maximum utilization of, the National Forest resources affected, as set forth in Article 14.

No construction is authorized by the issuance of this preliminary permit. This permit gives the permittee, during the period of the permit, the right of priority of application for license over other non-Federal entities, while the permittee undertakes the necessary studies and examination required by Section 9 of the Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in any application for license, should one be applied for under the permit. A license would authorize construction of a project.

The issuance of a preliminary permit for Project No. 2591 as hereinafter provided shall not in any way be construed as precluding the exercise of Commission action contemplated under the provisions of Section 7(b) of the Act.

Applicant requests a preliminary permit for 36 months. It appears appropriate however, that the initial period of the permit should be 24 months as herein provided.

*The Commission finds:*

(1) Applicant is a corporation organized under the laws of the State of Georgia.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The proposed project will not affect a Government dam.

*The Commission orders:*

(A) This preliminary permit is hereby issued to Georgia Power Company (Permittee) for a period of 24 months, effective as of June 1, 1967, for the sole purpose of maintaining priority of application for license for proposed Project No. 2591, to be located on the Oconee River in the Counties of Greene, Morgan, Oconee, Oglethorpe and Clark, Georgia, in the vicinity of Madison, Greensboro and Athens, and affecting lands of the United States, subject to the terms and conditions of Sections 4(f) and 5 of the Federal Power Act (Act) which are incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) According to the application for permit, the proposed project, consisting of a reservoir area of about 25,000 acres at full pool elevation and a capacity of 250,000 kilowatts, would be located between river mile 205 and 215 and would develop about 115 feet of gross head on the Oconee River above Georgia Power Company's proposed Laurens Shoals Reservoir (Project No. 2413).

(C) This preliminary permit is also subject to the terms and conditions set forth in Form P-1 entitled "Terms and Conditions of Preliminary Permit," (16 FPC 1303-1305) which terms and conditions, designated as Articles 1 through 8, are attached hereto and made a part hereof, and further subject to the following special conditions set forth herein as additional articles:

*Article 9.* The Permittee shall submit at the close of each six month period from the effective date of this permit to the Federal Power Commission accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

*Article 10.* The Permittee shall, during the period of project planning, consult with the District Engineer, U.S. Army Engineer District, Savannah, Georgia, concerning design, construction and operation of the project, and formulation adaptable to comprehensive planning for the basin.

*Article 11.* The Permittee shall, during the period of project planning, consult with the Federal, State, and local agencies having an interest in water quality as affected by rates of discharge, reaeration of water, and flowage conditions below the dam.

*Article 12.* The Permittee shall, during the period of project planning, consult with the Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" which is required for the filing of an application for license pursuant to Section 4.41 of the Commission's Regulations under the Federal Power Act.

*Article 13.* The Permittee shall, during the period of project planning, consult with the Federal, State, and local agencies having an interest in fish and wildlife in project lands and waters, in the preparation of an "Exhibit S" which is required for the filing of an application for license pursuant to Section 4.41 of the Commission's Regulations under the Federal Power Act.

*Article 14.* The Permittee shall, prior to undertaking any investigation work under this preliminary permit on National Forest lands, consult with the Regional Forester, United States Forest Service, Department of Agriculture, Atlanta, Georgia, or his representative, as to reasonable requirements relative to operations, field surveys and investigations, and shall abide by such requirements; and shall cooperate with the Forest Service during the period of this permit to develop a plan for alleviating damage to, and achieving maximum utilization of, National Forest resources insofar as they are affected by any proposed project.

*Article 15.* The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

*Article 16.* The Permittee shall, during the period of project planning, consult with the Department of the Interior concerning historic properties, in furtherance of the purposes of Public Law 89-665 (80 Stat. 915).

(D) This order shall become final 30 days from the date of issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the permittee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## PHILADELPHIA ELECTRIC COMPANY, PROJECT NO. 2355

### ORDER MODIFYING LICENSE ORDER

(Issued June 14, 1967)

On February 14, 1967 Philadelphia Electric Company licensee for Muddy Run Project No. 2355 (Applicant), filed an application to modify Article 41 of its license.

Applicant requests it be relieved of the requirement for the fencing of approximately 500 acres of land adjacent to the Muddy Run Reservoir as provided for in Article 41.

In compliance with Article 41 Applicant filed with the Commission on June 8, 1965 a memorandum of understanding between itself and the Pennsylvania Game Commission. On July 28, 1965 the Commission advised the Applicant that the memorandum appeared to comply with Article 41. In further discussions with the Pennsylvania Game Commission regarding procedures for planting, developing and managing the area in question, the Pennsylvania Commission requested that the area be open for public hunting, hiking and bird watching at all times, and indicated that a fence around the area may be detrimental to public utilization of the lands.

*The Commission finds:*

It is appropriate and consistent with the public interest that the license order in Project No. 2355 be modified as hereinafter provided.

*The Commission orders:*

Article 41 of the license order issued September 21, 1964 for Project No. 2355, as amended, is hereby modified as follows:

> *Article 41*. The licensee shall make available to the Pennsylvania Game Commission on a long term lease basis, about 500 acres of land adjacent to the Muddy Run Reservoir. These lands shall be developed to include food and cover plantings, at the Licensee's expense, provided that the Pennsylvania Game Commission will manage the area to provide public hunting, and will bear operation and maintenance costs. The licensee, prior to construction shall negotiate a memorandum of understanding with the Pennsylvania Game Commission, including such details and this agreement shall be filed with the Commission.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MINNESOTA POWER & LIGHT COMPANY, DOCKET NO. E-7350

### ORDER AUTHORIZING ACQUISITION OF COMMON STOCK

(Issued June 15, 1967)

Minnesota Power & Light Company (Applicant) filed an application on May 1, 1967, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the acquisition of 7,000 additional shares of Common Stock, par value $100 per share, of Superior Water, Light and Power Company, (Superior) a wholly-owned subsidiary. The purchase price will be the total par value of $700,000.

Applicant is incorporated under the laws of Minnesota with its principal business office at Duluth, Minnesota, and is engaged in the electric utility business in the State of Minnesota.

Superior is incorporated under the laws of Wisconsin with its principal business office at Superior, Wisconsin and supplies electric, gas and water service in Superior, Wisconsin and the area immediately adjacent thereto. All of the outstanding stock of Superior is presently owned by Applicant.

Applicant states that it proposes to make the additional investment in Superior for the purpose of enabling the latter company to finance in part the construction of about 30 miles of a 115 kv transmission line which is expected to cost Superior $633,700, and to finance the construction of additional water facilities at Minnesota Point estimated to cost $65,000. The transmission line will provide an interconnection with Lake Superior District Power Company enabling that company, the Applicant and Superior to exchange firm, economy, and emergency energy.

On the books of Minnesota Power & Light, the acquisition of Superior's stock is to be recorded by a debit of $700,000 to Account 123, Investment in Associated Companies, and by a credit of the same amount to Account 131, Cash. On the books of Superior the issuance of the stock is to be recorded by a debit of $700,000 to Account 131, Cash, and by a credit of the same amount to Account 201, Common Stock.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the Wisconsin Public Service Commission, and to the Governor of each of those States. Notice of the application was also published in the Federal Register on May 19, 1967 (32 F.R. 7479), stating that any person desiring to be heard or to make any protest with reference to said application should, on or before the 31st day of May 1967, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests. No protest or petition or request to be heard in opposition to the granting of such application has been received.

The Public Service Commission of Wisconsin, by order dated March 21, 1967, granted approval for Superior to issue 7,000 shares of Common Stock and to sell them for not less than $700,000 cash (par value).

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued February 12, 1959, *In the Matter of Minnesota Power & Light Company*, Docket No. E-6858 (21 FPC 214).

(2) Superior, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued June 3, 1959, *In the Matter of Superior Water, Light and Power Company*, Docket No. E-6881 (21 FPC 815)..

(3) By the proposed transaction, all as described above, Applicant will acquire the securities of Superior, another public utility, within the purview and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed acquisition by Applicant of the additional 7,000 shares of

Superior's Common Stock, all as described above, upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in the Federal Power Act.

(5) It has not been shown with respect to the proposed transaction, all as described above, that Applicant is subject to any requirement of the Public Utility Holding Company Act of 1935 or a rule, regulation, or order thereunder which would exempt it from the requirements of Section 203 of the Federal Power Act by reason of Section 318 thereof.

(6) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The acquisition by Applicant of 7,000 shares of Superior's Common Stock, all as described above, upon the terms and conditions and for the purposes set forth in the application is hereby authorized and approved subject to the provisions of this order.

(B) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the issuance of this order.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PENNSYLVANIA GAS COMPANY, DOCKET NO. CP67-280

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 19, 1967)

On March 24, 1967, Pennsylvania Gas Company (Applicant) filed in Docket No. CP67-280 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Due to increasing market requirements in its Erie, Pennsylvania and Jamestown, New York, market areas, Applicant proposes to construct and operate 12.5 miles of 20-inch transmission pipeline near Warren, Pennsylvania replacing approximately 31.6 miles of existing parallel 8-inch and 12-inch pipelines.

Applicant further proposes to abandon in place approximately 17.4 miles of 8-inch transmission pipeline between Warren, Pennsylvania and Jamestown, New York. Applicant states that this pipeline is no longer needed since the completion of facilities pursuant to the order of the Commission issued on May 24, 1966, in Docket No. CP64-199, 35 FPC 781. That order authorized the construction of a new 12-inch pipeline to serve the Jamestown, New York area and required Applicant to apply for abandonment of the old 8-inch pipeline serving the area or to submit to the Commission evidence of good cause for its continued operation.

Applicant also proposes to replace three sections, totaling 1.8 miles of 10-inch transmission pipeline, with 12-inch transmission pipeline along its main transmission pipeline system extending between Warren, Pennsylvania and Jamestown, New York. Applicant cites extensive corrosion of said sections of pipeline and recent New York State highway relocation as reasons for this portion of its proposed project. Rather than replace these sections with the same diameter pipeline, Applicant seeks authority to install 12-inch pipe in order to be in a position to eliminate need for replacement in the future should Jamestown's requirements continue to increase.

The total estimated cost of Applicant's proposed construction and pipeline replacement is $1,090,000, which cost will be financed from company funds and sale of securities to Applicant's parent, National Fuel Gas Company. The New York Department of Public Works will contribute $47,000 to offset the costs occasioned by highway relocation. The pipelines to be abandoned will be left in place and the original cost of $523,000 will be credited to the plant account with a counter debit to depreciation reserve.

After due notice, no petition to intervene, notice of intervention or protest has been filed herein.

At a hearing held on June 15, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Pennsylvania Gas Company, a Pennsylvania corporation having its principal place of business in Warren, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–370 (3 FPC 866).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

(7) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, Pennsylvania Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of the Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within eight months from the date of this order.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Carl E. Bagge and John A. Carver, Jr.

## TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., DOCKET NO. RP67-22

### ORDER TO SHOW CAUSE

(Issued June 19, 1967)

Tennessee Gas Pipeline Company (Tennessee), a Division of Tenneco Inc., is a "natural-gas company" within the meaning of Section 2(6) of the Natural Gas Act and as such is subject to the requirements of the Uniform System of Accounts for Class A and B Natural Gas Companies. An extensive and detailed investigation of Tennessee's books and records covering the years 1953 through 1964, inclusive, by the Staff of the Commission indicates that Tennessee has failed in many respects, hereinafter described in detail, to comply with the requirements of the Uniform System of Accounts.

Tennessee was served with a copy of the Staff's detailed analysis and in accordance with Section 158.1 of the Regulations under the Natural Gas Act was advised of the indicated deficiencies requiring correction to bring its accounts into conformity with the prescribed classifications, practices and procedures. Subsequent correspondence and conferences have failed to adduce justification for Tennessee's departures from the provisions of the Uniform System of Accounts. Under the circumstances it is appropriate and in the public interest that these issues be set for formal proceedings as hereinafter provided. It should also be noted that Tennessee has continued many of the accounting practices herein raised in issue and that the data concerning the dollar impact of the accounting adjustments proposed by this show cause order reflects only the situation as of the end of calendar year 1964.

Additionally, it is not the purpose of this order to encompass the certificate proceedings or related accounting and rate matters, pertaining to the acquisition by Tennessee of natural gas properties in the Bastian Bay and Ship Shoals fields offshore Louisiana. The issues pertinent to these acquisitions will be the subject matter of separate orders hereafter to be issued.

*The Commission finds:*

Tennessee appears to have failed in many respects to comply with the requirements of the prescribed Uniform System of Accounts including, but not limited to, the following items, and should be required to show cause, if any there be, why it should not conform its accounts and records to accord with the adjusting entries hereinafter listed:

(a) *Adjustment Re Non-producing Lease Cost Classified in Account 101, Gas Plant in Service*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 105 | Gas plant held for future use | $4,919,011 | |
| 116 | Other gas plant adjustments | 190,303 | |
| 101 | Gas plant in service | | $4,919,011 |
| 111.1 | Accumulated provision for amortization and depletion of producing natural gas lands and land rights | | 190,303 |

Tennessee has reported $4,694,237, applicable to uncertificated and non-producing leasehold costs, and $224,774, applicable to cost of gas leases held for future use as gas plant in service. The Uniform System of Accounts provides that such non-productive gas leases which are held only for future use shall be classified as such. Accordingly, Tennessee should transfer these sums from Account 101 to Account 105.

Tennessee also charged to Account 111.1, $190,303 which represents the excess cost of leases written off in the amount of $1,017,325, over the total depletion provided on the applicable properties of $827,022. However, the text of paragraph (C) of this account provides that Account 111.1 should be charged only with the amount previously credited in respect to property sold, abandoned or otherwise retired from service. Furthermore, Account 797, Abandoned Leases, must be charged with the excess cost of abandoned non-productive leases.

(b) *Adjustment Re Non-productive Well Drilling Costs Capitalized*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 116 | Other gas plant adjustments | $7,190,436 | |
| 111.1 | Accumulated provision for amortization and depletion of producing natural gas lands and land rights | 438,500 | |
| 101 | Gas plant in service | | $3,797,179 |
| 107 | Construction work in progress | | 3,831,757 |

Tennessee has recorded $3,797,179, representing non-productive well drilling (dry hole) costs, as gas plant in service. It also has improperly recorded $3,831,757 of such costs as construction work in progress. The Uniform System of Accounts provides for the current expensing of the net cost of drilling dry holes through charges to Account 796, Non-Productive Well Drilling. Accordingly, the amount of $7,628,936 which should have been expensed should be eliminated from capitalized plant investment, Accounts 101 and 107 and the accumulated provision for amortization of $438,500 taken up to December 31, 1964, on such erroneously capitalized costs should be removed from Account 111.1. Since it is no longer possible to charge the net non-productive well drilling costs of $7,190,436 to current operating expenses, such costs should be charged to Account 116, Other Gas Plant Adjustments for ultimate disposition to Account 216, Unappropriated Earned Surplus.

(c) *Adjustment Re Interest During Construction Taken on Production Plant Cost*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 116 | Other gas plant adjustments | $16, 704, 706 | |
| 111. 1 | Accumulated provision for amortization and depletion of producing natural gas lands and land rights | 133, 169 | |
| 101 | Gas plant in service | | $1, 377, 884 |
| 107 | Construction work in progress | | 15, 459, 991 |

Tennessee has erroneously computed interest during construction of $15,665,338 on plant balances recorded in Account 107, Construction Work in Progress. These balances consisted of costs of leases held for future exploratory or development drilling and costs of completed non-productive gas wells which should have been classified to Account 105, Gas Plant Held for Future Use and non-productive lease and well drilling costs which should have been expensed. Additional interest during construction on non-productive plant held for future use of $1,172,557 was improperly charged with respect to On System Production properties reconveyed by Tenneco Corporation to Tennessee pursuant to Commission order dated August 28, 1962, in Docket No. CI61-1272, 28 FPC 382. Account 107 provides that interest may be allowed on tangible construction work costs assignable to gas plant actually in service. Accordingly, interest during construction may not properly be charged on non-productive plant or on plant held for future use. Accordingly, a net amount of $16,704,706 should be eliminated from Accounts 101 and 107 and transferred to Account 116 for ultimate disposition to Account 216, Unappropriated Earned Surplus.

(d) *Adjustment Re Hurricane Damage Recoveries Recorded in Account 107, Construction Work in Progress*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 107 | Construction work in progress | $645, 532 | |
| 186 | Miscellaneous deferred debits | | $645, 532 |

Tennessee credited to Account 107, Construction Work in Progress, a net credit amount of $645,532 which represented the excess of insurance recoveries over the costs resulting from hurricane damage experienced in late 1963. Tennessee expects to capitalize such losses and estimates that when finally determined they will exceed the related insurance recoveries by $1,200,000. However, Account 186, Miscellaneous Deferred Debits, requires that all items whose final disposition is uncertain shall be recorded therein. Accordingly, the interim net credit amount of $645,532 should be transferred to Account 186 and the full loss when finally determined, should be recorded in Account 182, Extraordinary Property Losses, rather than capitalized.

(e) *Adjustment Re West Cameron Blocks 173 and 180*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 116 | Other gas plant adjustments | $300,214 | |
| 107 | Construction work in progress | | $300,214 |

Tennessee recorded $300,214 representing certain costs of $243,084 and interest charges of $57,130 in Account 107, Construction Work in Progress. This sum of $243,084 reflecting production office expenses of $129,517 and operation and maintenance charges of $113,567 of Tenneco Oil Company were assigned by Tennessee to shut-in wells. However, none of this total sum enhanced the value of the shut-in wells. Moreover, these costs were capitalized during a period when construction work for 11.8 miles of pipeline was not proceeding promptly. If construction had proceeded promptly when the certificate authorization therefor was issued, construction work would have been completed earlier and most of the $243,084 would have been charged to operating expenses. The interest charges of $57,130 accumulated on material costs which were subsequently reassigned and not included in final construction costs should be eliminated from Account 107 since that account includes only the cost of tangible properties actually used in gas plant.

(f) *Adjustment Re Classification of Non-Productive Plant as Gas Plant in Service*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 105 | Gas plant held for future use | $21,834,648 | |
| 107 | Construction work in progress | | $21,834,648 |

Tennessee recorded $21,834,648 consisting of lease costs applicable to shut-in wells of $6,898,078, costs of productive wells shut-in of $14,647,590 and costs of a platform that may be used in the future for directional drilling of $288,980, to Account 107. None of these property costs relate to gas plant actually in service and therefore these sums should be transferred to Account 105 to reflect the fact that they are plant held for future use.

(g) *Adjustment Re Classification of Accumulated Provisions for Amortization of Intangible Drilling Costs*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 111.1 | Accumulated provisions for amortization and depletion of producing natural gas lands and land rights | $2,161,270 | |
| 111.3 | Accumulated provisions for amortization of other gas plant in service | | $2,161,270 |

**Tennessee has recorded in Account 111.1, $2,161,270 applicable to intangible drilling costs capitalized which should be recorded in Account 111.3. The former account is restricted to the amortization and depletion of gas lands and land rights and all other tangible and intangible production plant should be classified to the latter account.**

(h) *Adjustment Re Excessive Interest Capitalized—Docket No. G–11107 Facilities*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 116 | Other gas plant adjustments | $2,198,504 | |
| 108 | Accumulated provision for depreciation of gas plant in service | 404,350 | |
| 101 | Gas plant in service | | $2,602,854 |

**Tennessee has included in Account 101, $2,602,854 of interest during construction and charged $404,350 to Account 108 as related depreciation taken on such excessive capitalized plant costs. These entries related to interest capitalized on Docket No. G–11107 plant facilities which was ready for service March 31, 1959, but the company continued to charge interest during construction on such facilities until November, 1959, the date upon which the facilities were placed in service. This accounting practice is contrary to the applicable provision of the Uniform System of Accounts. Thus, Gas Plant Instruction 3(17) specifically provides that when a portion of construction work is placed in operation or ready for service it shall be classified as gas plant in service and interest thereon as a charge to construction shall cease.**

(i) *Adjustment Re Excessive Interest Capitalized Materials and Pipe in Transit*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 116 | Other gas plant adjustments | $72,280 | |
| 108 | Accumulated provision for depreciation of gas plant in service | 17,931 | |
| 101 | Gas plant in service | | $90,211 |

**Tennessee capitalized interest on retainage payable to major vendors, between 1954 and 1964, of $90,211. Retainage represents the portion of bills payable which is withheld, for subsequent delayed payment, by the pipeline. The Uniform System of Accounts provides in Gas Plant Instruction 3(17) for interest during construction period on borrowed funds and an imputed cost**

on the company's own funds, insofar as such borrowed or internal monies are actually used for construction purposes. Since the portion of delayed costs representing retainage is not an interest cost actually incurred, such sums should not enter the base upon which interest during construction is computed.

(j) *Adjustment Re Interest Capitalized on Installation Contract Retainage*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 116 | Other gas plant adjustments | $258,970 | |
| 108 | Accumulated provision for depreciation of gas plant in service | 73,257 | |
| 101 | Gas plant in service | | $332,227 |

Tennessee also capitalized $332,227 of interest for the period 1953 through 1964 on contract retainage. Tennessee capitalizes interest on total billings received from contractors for installation of pipeline. Therefore, the interest during construction base includes amounts, in advance of cash expenditures, representing contract retainages payable upon satisfactory completion of construction. Accordingly, net excess interest of $258,970 should be transferred to Account 116, for ultimate disposition to Account 216, Unappropriated Earned Surplus.

(k) *Adjustment Re Storage Field Operating Costs and Interest Capitalized During Injection of Top Storage Gas*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 116 | Other gas plant adjustments | $343,284 | |
| 108 | Accumulated provision for depreciation of gas plant in service | 32,111 | |
| 101 | Gas plant in service | | $141,022 |
| 117 | Gas stored underground—Noncurrent | | 234,373 |

Tennessee capitalized operating costs incurred during periods when current (as opposed to base) storage gas was being injected into the Colden and Harrison storage fields. Tennessee also capitalized interest during construction on these storage facilities through December 1957 although the plant was ready for service in July 1957. The proposed credit to Account 117 of $234,373 represents operating expenses of $126,482 and interest on base storage gas improperly capitalized of $107,891. The excess interest capitalized after the plant was ready for service amounts to $141,022. Thus, the net excess costs and interests of $343,284 should be transferred to Account 116, for ultimate disposition to Account 216, Unappropriated Earned Surplus.

Gas Plant Instruction 3(17) provides that when plant is ready for service it should be classified as Gas Plant in Service and the capitalization of interest during construction thereon shall cease at that time. Final injections of noncurrent (base) storage gas were made during the months of April and July 1957. At that time, and thereafter, all operating costs incurred in the operation of these storage fields were part of the first yearly storage injection and withdrawal cycle and properly chargeable to current operating expenses.

(l) *Adjustment Re Excessive Charges to Construction From Airplane Clearings*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 116 | Other gas plant adjustments | $1,858,080 | |
| 108 | Accumulated provision for depreciation of gas plant in service | 170,698 | |
| 101 | Gas plant in service | | $2,028,778 |

**Tennessee's gas plant in service includes excessive charges to construction costs attributed to business passenger miles flown in company operated planes. During the years 1960 through 1964, inclusive airplane costs charged to pipeline construction overheads amounted to $1.3910 per business passenger mile. However, the same airplanes were used in connection with the operation of Tennessee's unregulated and other company businesses. Much lower average costs were assigned to such non-utility activities. Tennessee had a system average cost of only $0.7599 per business passenger mile and has failed to justify the imposition of disproportionately higher costs on pipeline operations, maintenance and construction activities.**

**General Instruction (E) of the Uniform System of Accounts provides that any payments or accruals in excess of just and reasonable charges shall be included in Account 426, Other Income Deductions, rather than classified as operating expenses. Accordingly, these excessive charges should be transferred to Account 116, Other Gas Plant Adjustments, for ultimate disposition to Account 216, Unappropriated Earned Surplus.**

(m) *Adjustment Re Classification of Common Utility Plant*

| Account | | Debit | Credit |
|---|---|---|---|
| No. | Title | | |
| 118 | Other Utility plant (common) | $7,653,273 | |
| 108 | Accumulated provision for depreciation of gas plant in service | 1,817,091 | |
| 111.3 | Accumulated provision for amortization of other gas plant in service | 160,172 | |
| 101 | Gas plant in service | | $7,653,273 |
| 119 | Accumulated provision for depreciation of other utility plant | | 1,977,263 |

**Tennessee classified in Account 101, $7,653,273 of facilities used in common by its pipeline operation and by various subsidiary and unregulated companies. The Uniform System of Accounts requires that such commonly used plant be recorded in Account 118, Other Utility Plant. Therefore, this plant and related depreciation should be removed from Accounts 101, 108, and 111.3. The related accumulated depreciation of $1,977,263 should be transferred to Account 119, Accumulated Provision for Depreciation and Amortization of Other Utility Plant.**

***The Commission orders:***

**Pursuant to the authority, and in order to effectuate the purposes, of the Natural Gas Act (particularly Sections 8, 9, 10, 14, 15 and 16) and the Uniform System of Accounts Prescribed for Natural Gas Companies, Tennessee Gas Pipeline Company (a Division of Tenneco Inc.) is directed to show cause, if any there be, by answer filed in accordance with Section 1.9(c) of the Com-**

**mission's Rules of Practice and Procedure within 45 days of the date of this order, why the Commission should not find, determine and order that:**

**(1) Adjusting entries be made by Tennessee to bring its accounts and records into conformity with the adjustments set forth in subparagraphs (a) through (m) above;**

**(2) Tennessee be required to make, keep, preserve and report its accounts in the manner prescribed by this Commission in the Uniform System of Accounts Prescribed for Natural Gas Companies;**

**(3) Tennessee make such corrected and substituted accounting entries for the years 1953 through 1964, inclusive, and for all succeeding years, as are consistent and in compliance with the provisions of said Uniform System of Accounts.**

## OPINION NO. 521

## GREAT LAKES GAS TRANSMISSION CO., DOCKET NOS. CP66-110, CP66-111 AND CP66-112; MICHIGAN WISCONSIN PIPE LINE CO., CP66-109; MIDWESTERN GAS TRANSMISSION CO., CP66-119, CP66-120 AND CP66-121; NORTHERN NATURAL GAS COMPANY, CP66-212; NORTHERN NATURAL GAS TRANSPORTATION CO., CP66-213, CP66-214 AND CP66-215

### OPINION AND ORDER GRANTING AND DENYING CERTIFICATES

(Issued June 20, 1967)*

### *Syllabus*

1. Record establishes that Trans-Canada has a reserve life of 21.6 years and deliverability of proven reserves is sufficient to meet its requirements for 14 years. P. 1077.
2. In evaluating which comparative proposals should be certificated, Commission is guided by mandates that it act in furtherance of interests of United States consumers. P. 1080.
3. Commission analysis of investment costs and stated costs-of-service, is not for purpose of passing on propriety of offered rates—this is a certificate, not a rate case; it could not be certain now that rates proposed by applicants would be found justified in the crucible of a rate proceeding. P. 1081.
4. Commission *discusses* costs and rates of comparative proposals. PP. 1081, 1084.
5. Since all proposals here are dependent upon Trans-Canada's reserves, which are found adequate, the gas supply issue is immaterial for comparative purposes. P. 1084.
6. Commission *discusses* market testimony in comparative proposals. PP. 1084, 1085.
7. Commission *rejects* argument that Trans-Canada's market growth in eastern Canada will be insufficient to support either proposal. P. 1084.
8. Commission *concludes* that impact of the Canadian import duty would have a depressing effect on market growth rate and accordingly there has not been an adequate market presentation to support Northern's proposal. P. 1085.
9. Stated generally, Great Lakes' proposal alone will offer possibility of providing United States consumers with an additional source of supply in event of National or local emergency affecting domestic production and will provide a basis for further competition in the midwest. P. 1086.
10. Benefit to our National security from Great Lakes potential cannot be overstated—Commission cannot ignore fact that Great Lakes line may well serve as a competitive stimulus in the midwest. P. 1086.

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***See Opinion No. 521-A and order denying rehearing issued August 9, 1967, 38 FPC 303. Remanded, *sub nom. Northern Natural Gas Co. v. F.P.C.*, 399 F. 2d 953 [CADC-1968]. See Opinion No. 553 and order on remand issued November 21, 1968, 40 FPC 1331. Opinion No. 580 and order issued July 10, 1970 on remand, 44 FPC 21.**

11. Great Lakes' capacity could well prove to be an economical source of additional gas for Northern, since if occasion arose, those supplies could be utilized to serve increasing market requirements on northern end of its system. P. 1087.
12. Commission *rejects* contention that neither application be approved prior to correlation of our natural gas import policy with the Mandatory Oil Import Program. P. 1088.
13. Section 3 of the Natural Gas Act provides that Commission shall issue an order permitting importation of gas unless it finds that the proposed importation "will not be consistent with the public interest." P. 1088.
14. Decision here is not intended to commit Commission to any long-range policy respecting importation of natural gas; rather it is consistent with past treatment where each import proposal was considered on its merits. P. 1089.
15. It would not be appropriate to consider, in comparative analysis, projects that would be wholly constructed outside United States; therefore intervener's petition to reopen is denied. PP. 1089, 1090.
16. Great Lakes' departure from Seaboard formula in setting rate design is justified. P. 1090.
17. Contention that Great Lakes is not a qualified applicant because equal ownership of its stock by Trans-Canada and American Natural might result in a deadlock is *rejected;* Commission perceives nothing objectionable about arbitration agreement here. P. 1090.
18. Great Lakes' certificate is conditioned to provide that it submit for approval a financing plan providing that common equity be maintained at not less than 15 percent of total capitalization and no dividends be paid on common stock as long as long-term debt exceeds 75 percent of total capitalization. P. 1090.
9. In comparative proceedings under Sections 3 and 7 of the Natural Gas Act, Commission *issues* certificate of public convenience and necessity; *authorizes* importation and exportation of gas; and *issues* Permit for border facilities under authority of Executive Order No. 10485.

*Charles V. Shannon, Bradford Ross, N. J. McNeill* and *James D. McKinney, Jr.* for Great Lakes Transmission Company and Trans-Canada Pipe Lines Limited

*Charles V. Shannon* and *Louis Flax* for Michigan Wisconsin Pipe Line Company

*Arthur R. Seder, Jr.* for Michigan Consolidated Gas Company

*Robert Shaw, W. C. Braden, Jr., L. R. Pankonien, John C. Breed, Jack Werner* and *Dale A. Wright* for Midwestern Gas Transmission Company

*F. Vinson Roach, Jack C. Osborne, Daniel B. O'Brien, Jr., John Gale, Justin R. Wolf, Charles A. Case, Jr.* and *David B. Ward* for Northern Natural Gas Company and Northern Natural Gas Transportation Company

*William J. LeBuhn* for Panhandle Eastern Pipe Line Company and Trunkline Gas Company

*John A. McGrath* for Fuels Research Council, National Coal Association and United Mine Workers

*John Davenport* for Texas Independent Producers and Royalty Owners Association (TIPRO)

*William I. Powell* for Independent Petroleum Association of America

*William T. Grove, Phillip Ehrenkranz* and *G. E. Creber* for The Consumers Gas Company and St. Lawrence Gas Company

*Jerome Ackerman* for Union Gas Company of Canada Limited and Northern and Central Gas Company

*Willard Stafford* for Madison Gas and Electric Company

*N. J. Lesselyoung* and *Willard Stafford* for Wisconsin Gas Company

*D. William Dean* and *Willard Stafford* for Wisconsin Fuel & Light Company

*Robert H. Gorske* and *Willard Stafford* for Wisconsin Natural Gas Company

*Seymour Tabin* and *Willard Stafford* for Wisconsin Public Service Corporation

*Robert H. Gorske* and *Willard Stafford* for Wisconsin Michigan Power Company

*Willard Stafford* for Wisconsin Power & Light Company

*William Cahalan* and *David R. Kaplan* for County of Wayne, State of Michigan

*William E. Torkelson* for Public Service Commission of Wisconsin

*Peter Spivak* for Michigan Public Service Commission

*Robert W. Mattson* for State of Minnesota

*Owen J. Beatty* for Department of Public Utilities, City of St. Paul, Minnesota

*Waggoner Carr, Linward Shivers* and *C. Daniel Jones, Jr.* for State of Texas

*Clarence A. H. Meyer* and *Gene A. Budig* for State of Nebraska

*Leo J. Steffen* for Iowa State Commerce Commission

*Keith M. Stidd* and *Arvid M. Falk* for City of Minneapolis, Minnesota

*John F. Gaston* for Iowa Electric Light and Power Company

*William B. Waterman* for Iowa-Illinois Gas and Electric Company

*Mark W. Putney* for Iowa Power and Light Company

*J. F. Kinney* for Iowa Public Service Company

*C. S. Brubaker* for Metropolitan Utilities District of Omaha

*George C. Mastor* for Minneapolis Gas Company

*Ned Willis* for North Central Public Service Company

*Arthur R. Renquist* for Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

*Peter V. Fazio, Jr.* for Northwestern Public Service Company

*Lloyd J. Marti* and *Duane T. Swanson* for Western Power and Gas Company

*J. P. Bahn, A. R. Faurot* and *J. B. Falahee* for Consumers Power Company

*John McCausland* for Northern Illinois Gas Company

*Carlyle C. Ring, Jr.* and *Chismon Hanes* for Northwestern Refining Company

*Charles C. McDugald, William W. Brackett* and *Steven L. Larson* for Natural Gas Pipeline Company of America

*Richard F. Babcock* and *Raymond Petersen* for The Peoples Gas, Light and Coke Company

*Richard M. Merriman* and *Peyton G. Bowman, III* for Michigan Gas Utilities Company

*Edmund A. Schroer* for Northern Indiana Public Service Company

*John W. Scott* and *Louis L. DaPra* for Minnesota Natural Gas Company

*George P. Lewnes* for the Staff of the Federal Power Commission

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

O'CONNOR, *Commissioner:*

In this case we are asked to certificate facilities designed to transport western Canadian gas through the United States for delivery at eastern Canadian markets. Two competing proposals are before us[1]: one filed by the Great Lakes Gas Transmission Company (Great Lakes), the other by the Northern Natural Gas Company (Northern

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[1] **The applications are before us following waiver, upon application, of the Examiner's decision [Editor's note. Examiner's decision waived by order issued March 3, 1967, 37 FPC 492]. Oral argument was heard on April 21, 1967. A descriptive map is attached.**

Natural) and the Northern Natural Gas Transportation Company (Northern Transportation). Under each proposal Trans-Canada Pipe Lines Limited (Trans-Canada) would make Canadian gas available at Emerson, Manitoba, and have the equivalent volumes returned to it at two delivery points in Ontario, Sault Ste. Marie and at the St. Clair river near Sarnia. Similarly, both proposals contemplate the sale of Canadian gas by the applicant to the Michigan Consolidated Gas Company (Michigan Consolidated) and by the Midwestern Gas Transmission Company (Midwestern) to the Michigan Wisconsin Pipe Line Company (Michigan Wisconsin); the identical volumetric sale is provided for under each proposal. Indeed, the essential difference between the proposals relates to the manner in which the transportation service for Trans-Canada would be performed. The Great Lakes proposal requires the construction of an entirely new pipeline which would be utilized, principally, to through-put Canadian gas; the Northern proposal would utilize both existing and new facilities to effect an exchange of Canadian gas for United States' production. We are asked not only to issue the necessary certificates of public convenience and necessity under Section 7 of the Natural Gas Act authorizing the required construction and sales within the United States, but to authorize as well the requested importations and exportations and the construction of the necessary border facilities pursuant to Section 3 of the Act and Executive Order 10485, respectively. For the reasons stated, we find that our authority should be exercised in favor of the Great Lakes proposal.

## The Great Lakes Proposal

Great Lakes is a Delaware corporation, jointly owned by Trans-Canada and the American Natural Gas Company (American Natural). Trans-Canada is a Canadian corporation which owns and operates a pipeline system extending from Alberta to population centers in Ontario and Quebec. Its reserves are located in Alberta and are delivered to it through the facilities of Alberta Gas Trunk Line Company, Ltd. Between Alberta and Winnipeg, Trans-Canada has a fully looped 34-inch line and from Winnipeg to Toronto it has a single 30-inch line. It connects with Midwestern near Emerson and with other United States companies at Niagara Falls and in northern Vermont.

American Natural is the parent company of both Michigan Wisconsin and Michigan Consolidated. Michigan Wisconsin has pipeline facilities extending into Texas and Louisiana and transmission facilities in Wisconsin, Illinois, Indiana and Michigan. Michigan Consolidated owns transmission and distribution facilities in Michigan extending from the upper peninsula to the Detroit area. Trans-Canada and American Natural have contractually agreed to submit Great Lakes' operational disputes to arbitration.

Great Lakes seeks authority (CP66–110) under Section 7 to construct and operate a 989-mile, 36-inch pipeline extending between points of connection with Trans-Canada at Emerson, Manitoba, and near Sarnia, Ontario. The new line would traverse northern Minnesota, Wisconsin, and the upper peninsula of Michigan, cross the Straits of Mackinac and continue south to the central Michigan underground storage fields of Michigan Wisconsin and from there east to the St. Clair River. North of the Straits of Mackinac a 44-mile, 10-inch lateral would be constructed to Sault Ste. Marie, Ontario. Great Lakes also seeks authority to import and export gas (Docket No. CP66–112), and to build facilities at the international border (Docket No. CP66–111).

The Great Lakes' project will be constructed in two steps: in the first year 157 miles of pipeline will be built between Michigan Wisconsin's central Michigan storage area and the St. Clair delivery point and will be used to transport, for the account of Trans-Canada, 113 $M^2$cfd which it will purchase from Michigan Wisconsin. In return Michigan Wisconsin will purchase an equivalent volume of gas at Marshfield, Wisconsin, from Midwestern, which, in turn, will purchase the gas for that sale from Trans-Canada at Emerson. During the first three contract years Great Lakes will also transport gas from Michigan Wisconsin for the account of Michigan Consolidated for injection into the latter's lower peninsula Belle River Mills storage field.

In the second contract year the 832 miles of pipeline between Emerson and the Michigan Wisconsin storage area, as well as the lateral to Sault Ste. Marie, will be constructed. In that year, Trans-Canada will reduce its purchases from Michigan Wisconsin to 63 $M^2$cfd, and Great Lakes will transport a contract demand of 392 $M^2$cfd for Trans-Canada's account from Emerson to the two Ontario delivery points. Great Lakes will also commence the sale of 20 $M^2$cfd of Canadian gas to Michigan Consolidated for resale in the upper peninsula of Michigan and for injection into the Belle River Mills storage field near St. Clair, Michigan.

Beginning with the third contract year, Trans-Canada will cease purchasing gas from Michigan Wisconsin, and Great Lakes will transport a contract demand of 530 $M^2$cfd. The volume to be transported by Great Lakes for Trans-Canada will reach 600 $M^2$cfd in the fifth year. Michigan Consolidated will increase its purchase from Great Lakes to 40 $M^2$cfd in the third year and to 57 $M^2$cfd in the fourth year, at which level it will thereafter remain. Trans-Canada has obtained the necessary licenses from the Canadian National Energy Board.

Midwestern seeks authority (Docket No. CP66–119) to construct and operate additional facilities on its northern system, consisting primarily of additional compression, and to sell an additional 113 M$^2$cfd to Michigan Wisconsin at Marshfield for resale. From the third year of operation on, when Michigan Wisconsin will no longer be selling gas to Trans-Canada, the entire 113 M$^2$cfd will be utilized by Michigan Wisconsin to meet its domestic requirements. Additionally, Midwestern seeks authority to import 116.332 M$^2$cfd from Trans-Canada (Docket No. CP66–121) as well as authority to build border facilities (Docket No. CP66–120). Under the Great Lakes and Midwestern applications total additional sales of Canadian gas to United States customers will, therefore, amount to 170 M$^2$cfd.

By agreement with the Canadian Government Trans-Canada cannot dispose of its half interest in the Great Lakes project without government authorization and it must plan its operations so as to retain its Canadian line as the principal means of transporting western Canadian gas east. As to the latter Trans-Canada is obligated, at the outset, to use its Canadian line for more than 50 percent of such deliveries and to increase such usage to 60 and then 65 percent as its Eastern market needs grow.[2]

The construction cost of the Great Lakes proposal, through the fifth year, is estimated to be $228,108,000. Of this total $211,669,000 is estimated as the cost of the Great Lakes' line, $13,562,000 as the cost of Midwestern's additional facilities, which includes 5.6 miles of 30-inch looping and the addition of compression, and $2,877,000 as the cost to be expended by Michigan Wisconsin, primarily for the addition of compression. Great Lakes proposes to finance its investment costs by raising $203 million—$145 million through 20-year first mortgage sinking fund bonds, $24 million through 10-year sinking fund promissory notes, and $34 million through the issuance of common stock to be purchased equally by Trans-Canada and American Natural.

The rates which Great Lakes proposes to charge are predicated on a fifth year cost of $41,001,900, representing $35,044,000 in transportation cost of service (which includes a 6.5 percent return on a $211,669,000 net investment base) and $5,957,900 as the cost of gas purchased for resale. The economic feasibility of its line in that year is based on the minimum delivery of 255,500 M$^2$cf. To establish that that amount of gas will in fact be transported Great Lakes relies on long-term (25 years) transportation and sale contracts with Trans-Canada and with Michigan Consolidated, respectively. Pursuant to those contracts Great Lakes will transport up to 677 M$^2$cfd (234,800 M$^2$cf annually) for Trans-Canada and 57 M$^2$cfd (20,800 M$^2$cf annually) for Michigan Consolidated. Relying on distributor contracts and market projections Great Lakes contends that Trans-Canada will require 456,000 M$^2$cf for its eastern Canadian markets by 1970. Applying the requirement that at least 50 percent of the deliveries be made through the existing Canadian line, Great Lakes contends that it will be transporting 224,000 M$^2$cf through its line. In addition to this basic transportation service and the amount to be sold to Michigan Consolidated, Great Lakes will transport an additional 11,000 M$^2$cf for Trans-Canada which amount, since following delivery at St. Clair it will be exported by Trans-Canada to New York and Vermont, is not subject to the 50 percent limitation, and will utilize 10,000 M$^2$cf in fuel and losses. Assuming a transportation and resale annual volume of 255,550 M$^2$cf and a total cost of operations of $41,001,900 Great Lakes' rates to Trans-Canada and Michigan Consolidated would be as follows:

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[2] **The increase to 60 percent is to commence November 1, 1976, provided that by that time Trans-Canada's market demand in eastern Canada has reached 579,490 M$^2$cfd. If its needs have not grown at the anticipated rate, the 60 percent minimum is deferred until the year after that demand has been reached. The 65 percent minimum is to be reached "within a reasonable time" thereafter.**

| | Demand | Commodity |
|---|---|---|
| | *Per Mcfd per month* | *Per Mcf* |
| For Transportation [3] | $2.54 | 5.0¢ |
| Price at Emerson | 2.706 | [4] 19.745¢ |
| For Sale [5] | 5.24 | 24.75¢ |

[3] The contract gives Trans-Canada the option during the first three years of paying a straight commodity rate of 13.75 cents per Mcf, approximately the demand-commodity-charges at a 95 percent load factor.

[4] This is the contract charge for Jan. 1, 1971, through 1975.

[5] Michigan Consolidated will have the option during the first three years of paying a straight commodity rate of 41.04 cents per Mcf.

At 100 percent load factor these rates amount to 13.35 cents per Mcf to Trans-Canada and 41.98 cents per Mcf to Michigan Consolidated.[6]

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[6] Midwestern will purchase gas from Trans-Canada at a demand charge of $2.706 per Mcf per month and a commodity charge of 19.745¢ per Mcf for the period Jan. 1, 1971, through 1975. At 100 percent load factor the rate would be 28.63 cents per Mcf. Midwestern will resell the gas to Michigan Wisconsin under its Rate Schedule CD-2 with a demand charge of $3.94 and a commodity charge of 24.92¢, or a rate of 37.9 cents per Mcf at 100 percent load factor. According to the record this price would approximate Michigan Wisconsin's cost of gas in the area. Moreover, to bring an additional 113 M$^2$cfd of its own reserves into its system Michigan Wisconsin may well have to loop its entire line between Janesville and South Louisiana. Michigan Wisconsin's rate for its interim service to Trans-Canada will be $4.60 and 27.75¢, or a rate of 40.88 cents per Mcf at 100 percent load factor. Trans-Canada will pay Great Lakes 2¢ per Mcf as a transportation charge relating to its purchases, during the first two years, from Michigan Wisconsin.

There is no reserve problem. It is contended without dispute, and the record establishes, that Trans-Canada has a reserve life of 21.6 years and that the deliverability of its proven reserves, under existing contracts, is sufficient to meet its requirements for 14 years.

### THE NORTHERN PROPOSAL

As noted, Northern Natural and its newly formed subsidiary, Northern Transportation, propose a project that is capable of performing essentially the same service both for Trans-Canada and Michigan Consolidated as would Great Lakes.[7] Thus, Northern would receive up to 677 $M^2$cfd from Trans-Canada at Emerson and deliver the equivalent volume in Ontario at Sault Ste. Marie and St. Clair. Further, it would purchase sufficient volumes from Trans-Canada to take care of fuel usage and permit the sale of up to 57 $M^2$cfd to Michigan Consolidated. As originally proposed, Northern would have Midwestern sell the 113 $M^2$cfd to Michigan Wisconsin. By supplement to its application it offers in the alternative to make that sale itself from its southern reserves. The Northern proposal is dependent upon the construction of three new pipeline fragments by Northern Transportation which would connect with existing facilities of Northern Natural. In addition, Northern Natural would be required to undertake some expansion of its present system.

Northern Transportation's facilities would be constructed in two stages. For the first year of operation it would construct a 214-mile, 36-inch pipeline between facilities of Michigan Wisconsin near Niles, Michigan and Trans-Canada's facilities at St. Clair. In the second year of operation it would construct 285.4 miles of 36-inch line from Emerson to the facilities of Northern Natural at Sandstone, Minnesota, 417 miles of 36-inch line from Ogden, Iowa, to Niles, (for a total of 916 miles of 36-inch line) and 186 miles of 12-inch line from Republic, Michigan to the Sault Ste. Marie.

The basic Northern proposal is to have Canadian gas delivered by Trans-Canada to Northern Transportation at Emerson. Northern Transportation would bring that gas south into the Northern Natural system at Sandstone where it would be used, in the main, to satisfy Northern's own system requirements north of Ogden, as well as to supply 29 $M^2$cfd to Trans-Canada at Sault Ste. Marie and 57 $M^2$cfd to Michigan Consolidated. In exchange for the Canadian gas so utilized Northern Natural would deliver equivalent volumes, from its domestic reserves, to Northern Transportation at Ogden for delivery to Trans-Canada at St. Clair. To assure Trans-Canada that it will deliver to it domestic gas of the equivalent Btu and specific gravity as the Canadian gas which it receives, Northern Natural has offered, as one alternative, to segregate and in effect dedicate whatever facilities are necessary to transport the required volume to Ogden from its southern reserves.

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[7] The combined Northern Natural—Northern Transportation proposal hereinafter will be referred to as the Northern proposal.

During the first two years of service Northern Transportation would transport, between Niles and St. Clair, volumes of gas to be purchased by Trans-Canada from Michigan Wisconsin. During the first three years Northern Transportation would also transport to Michigan Consolidated's Belle River Mills storage field gas to be purchased from Michigan Wisconsin at Niles. Northern Transportation seeks the requisite import and export authorizations (Docket No. CP66-215) as well as authority to construct the necessary border facilities (Docket No. CP66-214).

In order to accommodate the large quantity of Canadian gas that would be delivered into its system at Sandstone, Northern Natural proposes to expend $14,575,000 for additional facilities north of Ogden.

The construction cost of the Northern proposal is estimated to be $185,298,000, the cost of the facilities to be constructed by Northern Transportation. No charge is assessed against the proposal for the existing or additional facilities of Northern Natural which will be utilized. In addition, Michigan Wisconsin would expend $2,759,000 and Midwestern $13,562,000.

Northern Transportation proposes to finance its project through the sale of $50,000,000 of common stock, $100,000,000 of sinking fund promissory notes and $19,500,000 of interim notes. All of the securities would be purchased by its parent, Northern Natural, which would itself issue $115,000,000 of debentures, $30,000,000 of preferred stock and $21,000,000 of common stock.

For service to Trans-Canada and Michigan Consolidated Northern relies upon Trans-Canada's western Canadian reserves. For the domestic gas to be substituted for the Canadian gas which it would use on its own system Northern Natural relies on its domestic reserves which are estimated at 14.5 trillion cubic feet and upon its 12-year deliverability. Northern relies upon the same market estimates as were put forth in support of the Great Lakes' proposal.

The rates which Northern Transportation proposes, assuming a cost of service, for the 1970–71 year, representing $31,451,000 in transportation cost (including a 6.75 percent rate of return) and $5,957,900 as the cost of gas purchased for resale, are as follows:

| | Demand | Commodity |
|---|---|---|
| | *Per Mcfd per month* | *Per Mcf* |
| Transportation rate for Trans-Canada | $2.54 | 3.6¢ |
| Resale rate to Michigan Consolidated | 5.16 | 23.2¢ |

At 100 percent load factor the rate to Trans-Canada would be 11.95 cents per Mcf and 40.17 cents per Mcf to Michigan Consolidated.

## The Staff Proposal and Northern's Modification

The staff introduced a proposed project which would make use of facilities of Midwestern, Northern Natural and Michigan Wisconsin. Midwestern would install 343.5 miles of 36-inch looping and compression, at an estimated cost of $77,902,000, between Emerson and Northern's North Branch compressor station in eastern Minnesota. In the fifth year Midwestern would receive 734 M$^2$cfd from Trans-Canada at Emerson and deliver 600 M$^2$cfd to Northern Natural at North Branch and 134 M$^2$cfd to Michigan Wisconsin at Marshfield, Wisconsin.

Of the 600 M$^2$cfd received, Northern Natural would sell 28 M$^2$cfd to Michigan Consolidated in the Upper Peninsula and would deliver 29 M$^2$cfd to Trans-Canada at Sault Ste. Marie. It would use the remaining 543 M$^2$cfd on its own system, delivering an equivalent amount of its domestic production to Michigan Wisconsin at Janesville, Wisconsin. To effect this sale and exchange Northern would be required to expend approximately $62,355,000 for additional facilities, including 186.4 miles of 12-inch line from Republic, Michigan to Sault Ste. Marie, 298.5 miles of 26-inch and 30-inch loop on its Ogden to Janesville line and 85.3 miles of 20-inch loop on the line between its North Branch and Superior compressor stations.

Michigan Wisconsin would use the 134 M$^2$cfd which it would receive from Midwestern and the 543 M$^2$cfd which it would receive from Northern Natural to satisfy its own system requirements. Among other facilities, estimated to cost $74,490,000, it would construct 214 miles of 36-inch line extending from near Niles, Michigan to St. Clair where it would deliver 648 M$^2$cfd to Trans-Canada. It would also deliver 29 M$^2$cfd to Michigan Consolidated at the latter's Belle River Mills storage field.

The cost of the staff project would be $214,747,000, not including the $10,846,000 that Midwestern would have to expend for additional facilities necessary to deliver 113 M$^2$cfd to the American Natural system, or a total cost of $225,593,000.

In support of its proposal the staff contends that it would make maximum utilization of the existing facilities of Midwestern, Northern Natural and Michigan Wisconsin, would eliminate the need to segregate facilities in order to solve the Btu problem presented by an exchange because the facilities proposed are designed to support volumes of gas sufficient to offset any differences in Btu content, and would provide Midwestern with an opportunity to expand.

Northern, when the hearings were reopened in January 1967, presented a modification of the staff proposal. Under that proposal Midwestern would transport 113 $M^2$cfd to Michigan Wisconsin in the first year and Michigan Wisconsin would construct a 36-inch line from Niles to St. Clair. In the second year, Northern Transportation would construct a 30-inch line from Emerson to Northern Natural's facilities at Sandstone, a 12-inch line from Republic to Sault Ste. Marie, and a 36-inch line from Ogden east to Michigan Wisconsin's Station 10, in Wisconsin.

Northern Natural would receive 734 $M^2$cfd of Canadian gas (657 $M^2$cfd delivered to it at Sandstone by Northern Transportation and 77 $M^2$cfd by Midwestern at North Branch) which gas would be used by Northern Natural on its system and delivered to Michigan Consolidated in the Upper Peninsula and to Trans-Canada at Sault Ste. Marie. In exchange for the Canadian gas used on its system Northern Natural would deliver the equivalent volume of United States production to Northern Transportation at Ogden for delivery to Michigan Consolidated and Trans-Canada. The cost of this modified staff project is estimated at $206,622,000 as compared with the total cost of $225,593,000 for its original proposal, the savings allegedly being due to the use of a shorter 30-inch line from Emerson rather than the 36-inch line originally proposed and the direct transportation of gas from Ogden to Michigan Wisconsin's Station 10 rather than via Janesville.

## THE PANHANDLE INTERVENTION

The Panhandle Eastern Pipe Line Company intervened in opposition to each of the proposals. Preliminarily, it argues that from the standpoint of Trans-Canada and its Canadian consumers looping the Canadian line would be preferable to any proposal for the transportation of gas through the United States. It also argues that neither Great Lakes nor Northern has made an adequate market presentation. In addition, in a specific attack on Great Lakes, Panhandle argues that its costs are understated and that its rate design assigns a disproportionate share of fixed costs to demand. The Northern proposal, according to Panhandle, is subject to these same deficiencies.

## COMPARISON OF THE PROPOSALS

In evaluating which, if any, of these comparative proposals should be certificated we are, of course, guided by the mandate that we act in furtherance of the interests of United States consumers.[8] Where, however, the proposal which best serves those interests would also be of particular benefit to consumers in Canada we welcome the opportunity to act in the interests of our Canadian neighbors as well. Such a dual possibility is offered by the Great Lakes' proposal which we here certificate.

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[8] *F.P.C., et al* v. *Hope Natural Gas Co.*, 320 U.S. 591, 612 (1944) ; *Atlantic Refining Co., et al.* v. *Public Service Commission of New York, et al.*, 360 U.S. 378, 388 (1959).

## Costs and Rates

There is much discussion and controversy in the record as to the true cost of the alternative projects. The range of the conflicting alternatives is extreme. Great Lakes asserts that the proper cost of service for Northern will be approximately $10.5 million more per year on an incremental basis than its own and $25 million per year on a fully-allocated basis; Northern, on the other hand, claims that the investment costs in its proposal will be some $60 million less than those in Great Lakes and that this differential will permit a savings of some $6,755,000 per year to the customers of Trans-Canada, Michigan Consolidated and itself.

It should be clear that our analysis of investment costs, and of the stated costs-of-service, is not for the purpose of passing upon the propriety of the offered rates. This is a certificate case, not a rate case, and we could not now be certain that the rates proposed by either of the applicants would be found to be justified in the crucible of a rate proceeding. Our concern here is whether the estimates offered to us are reasonable, or rather would be so obviously vulnerable in a rate proceeding as to make present reliance on the tendered rates unfounded for anything more than the short-run. Based upon our analysis, the alleged rate savings to be realized by Trans-Canada and Michigan Consolidated under the Northern proposal ($3,300,000 and $377,000 in the fifth year, respectively) are unrealistic over the long-run.

As noted, Great Lakes has estimated its investment costs, through the fifth year, at $211,669,000. Northern contends that those costs would more closely approximate $260,472,000; the staff estimates them at $214,151,000.

Preliminarily, it is clear that Northern's estimate of the Great Lakes' cost improperly includes the $29,882,000 that Northern allegedly would have to spend to expand its own facilities north of Ogden should it not be certificated. Without taking issue with the magnitude of the expenditure and leaving aside the fact that Northern may be able to avoid any such expansion of its facilities by satisfying its northern needs through purchases from Great Lakes (see *infra*, p. 1087), it is clear that expenditures on Northern's system which are unnecessary to the viability of the Great Lakes project should not be charged against that project. The principal focal points of the remaining discrepancy between the Northern and Great Lakes estimates of the latter's investment cost relate to the cost of river crossings, primarily the crossing of the Straits of Mackinac, the cost of compressor stations, and the fact that Great Lakes' original estimate was predicated on the use of 30-inch pipe which estimate was readjusted to reflect the cost that would be associated with a 36-inch pipe. We find that these objections are not well taken. As to the crossing at the Straits of Mackinac, Northern relied upon the costs that had been submitted to the Interstate Commerce Commission following the construction of a liquid petroleum products line by the Lakehead Pipe Line Company. Aside from the fact that those costs included a $2.3 million overhead charge and a $3 million equipment charge on basic construction costs of but $2.6 million, our experience with river crossings is by now more sophisticated than it was in 1953 when Lakehead crossed the Straits. On the matter of compressor stations, we need note only that Great Lakes supported its estimates with supplier quotations. As to the basic pipeline construction costs, while its initial estimate was based on the use of 30-inch pipe, the Great Lakes estimate on the larger pipe was not only substantiated by the testimony of Mr. David Williams, Jr., of The Williams Brothers Construction Company, but that company offered to complete the major construction effort within the Great Lakes estimate.

We do agree, however, that the staff adjustments, based on increased material costs, are well taken. But we are equally convinced that Great Lakes has justified some of the reductions which it contends should be made before undertaking a comparative analysis. For example, Great Lakes alone proposed the internal coating of its pipeline and allowed 5 percent for omissions and contingencies as opposed to 4.3 percent by Northern. Based upon these and other adjustments Great Lakes contends that its total investment cost, when placed upon a basis comparable with Northern's would be reduced to $200,598,000. Without deciding which of these adjustments are appropriate, it seems clear that based upon all of the foregoing it is reasonable to assume that the cost of service on the Great Lakes project should not exceed the $35 million estimate offered by Great Lakes and upon which it determined its rates.

The correctness of the Northern cost of service of $31,451,000 is, however, open to serious challenge. First, it is predicated on the cost of facilities to be constructed by Northern Transportation alone, to wit, $185 million. It does not include the more than $14 million that Northern Natural would have to expend on its own system merely to accommodate the delivery of Canadian gas. Moreover, even when that additional expenditure is included in the cost of service for the Northern proposal that would represent only the project cost on an incremental basis. In rate proceedings the established policy of this Commission is to set rates on a system-wide rolled-in cost of service. It would appear, therefore, that the Northern proposal would be charged for the transportation services which Northern Natural would perform for it free of charge. This includes not only the delivery of gas, over the Northern Natural system, between Sandstone and Republic for eventual delivery to Trans-Canada and Michigan Consolidated, but the use of Northern Natural facilities to effect the exchange-displacement. Great Lakes introduced a study which shows that utilizing a conventional Mcf-mile allocation, an annual charge of $13 million would have to be assessed against the Northern proposal for those transportation services. While we are not now prepared to pass upon the propriety of that calculation, we are convinced by it that the Northern cost of service is seriously understated and that the alleged rate savings to Trans-Canada and Michigan Consolidated under that proposal would be but short-run.

Moreover, in order to assure Trans-Canada delivery of the same Btu and specific gravity gas as that which it delivers to Northern Transportation, Northern Natural has proposed, in effect, to "dedicate" a line between Ogden and its southern reserves. Apart from the costs that would be involved with any such segregation and dedication it would require Northern Natural to convert to a Btu form of tariff, a conversion that could affect each and every one of its existing customers.

There is an additional consideration relevant to our cost analysis, the effect on Michigan Consolidated. The rate savings to Michigan Consolidated which Northern contends would be available under its proposal ($377,000) represents the difference between the proposed rate of 40.17 cents per Mcf as compared to Great Lakes' 41.98 cent rate. Aside from the fact that Northern has overlooked Great Lakes' tender of a straight commodity rate of 41.04 cents to Michigan Consolidated for the first three years and ignores the reduction that would flow from use of the cheap expansibility which is offered only by the Great Lakes proposal, it ignores as well the increased facilities costs that Michigan Consolidated would have to expend were Northern its supplier in the Upper Peninsula. The record demonstrates that it would cost Michigan Consolidated approximately $45,000 more annually in cost of transmission to take gas from Northern than from Great Lakes. In addition, because the Great Lakes line would closely parallel the Michigan Consolidated system from the Upper Peninsula to the Detroit area it is strategically located so as to permit Michigan Consolidated to make inexpensive taps to serve its load growth rather than constructing the facilities necessary to bring additional gas through its entire system. It is estimated that this advantage will save Michigan Consolidated some $7½ million in capital expenditure over the next five years.

### SUPPLY

Since all of the proposals are dependent upon Trans-Canada's reserves, which we find to be adequate, the supply issue is immaterial for comparative purposes. Although it was contended that the Northern proposal was deficient with respect to supply due to the fact that these reserves were committed to Great Lakes and that should the Great Lakes application be denied Trans-Canada would not enter into a similar arrangement with Northern, we do not feel that we are bound by this assertion. Trans-Canada would properly face that decision only in the event that the Northern proposal were certificated, and we assume that at that time it would act in a manner consistent with the best interest of its Canadian customers. For our purposes here we find that the supply requirements are met by each of the proposals.

### MARKET

Critical to the economic feasibility of each proposal is the need by Michigan Wisconsin for approximately 35,200 $M^2$cf annually, by Michigan Consolidated for approximately 21,000 $M^2$cf annually, and by Trans-Canada for 224,000 $M^2$cf annually in eastern Canada. There is no dispute as to the needs of Michigan Wisconsin and Michigan Consolidated. Panhandle argues, however, that Trans-Canada's market growth in eastern Canada will be insufficient to support either proposal.

In response Trans-Canada put on evidence which would support a 1970–71 need by it of 456,000 $M^2$cf in eastern Canada (including 13,000 $M^2$cf for company use east of Winnipeg but not including the 11,000 $M^2$cf that would be delivered to it at St. Clair for export to New York and Vermont). Based upon the individual company growth evidence before us we find that Trans-Canada's distribution customers in eastern Canada will need approximately 443,000 $M^2$cf annually by the winter of 1970–71. We are persuaded, from Trans-Canada's showing, that the potential for growth of the eastern Canadian market is at least equal, if not better, than similar United States population centers. For example, the market growth in Ontario and Quebec averaged 18 percent annually between 1960 and 1964 and 15 percent annually in the two succeeding years, a percent of growth which far exceeds comparable United States experience. Therefore, it is reasonable to assume that after satisfying its obligation to transport the majority of its gas through its Canadian line, Trans-Canada will nevertheless be able to transport approximately 224,000 $M^2cf$ through the Great Lakes line. It should be noted that in view of the contractual minimum billing requirements, Trans-Canada is encouraged to take full advantage of the use of the Great Lakes line for which it has contracted. On this minimum basis alone Great Lakes would earn a net income of $5,700,000 and a return in excess of 6 percent in the fifth year.

Northern made no independent market showing; it relied upon the Great Lakes presentation. However, even were we to assume that Northern would be able to negotiate the same long-term contracts with Trans-Canada and Michigan Consolidated, we question seriously whether it can be assumed that Trans-Canada would experience the same eastern market growth with Northern as its supplier as it would if it were served through Great Lakes. Canada imposes a 3 cent per Mcf duty on imported gas and it has not been shown that this duty would be waived.[9] While the duty would appear to apply equally to both proposals during the first two years, thereafter it would apply only under the Northern proposal for while Great Lakes would through-put gas for the account of Trans-Canada, Northern would exchange Canadian gas for United States production. On fifth-year volumes this duty would amount to a charge against Trans-Canada and, presumably, its customers, including those in New York and Vermont, of $6,749,000. We cannot help but conclude that the imposition of an additional charge of that magnitude would have a depressing effect on the market growth rate. Accordingly, there has not been an adequate market presentation to support the Northern proposal.

Moreover, the exchange-displacement arrangement presents special problems to Northern Natural. The feasibility of the Northern proposal depends upon Northern Natural's ability to use all of the Canadian gas delivered to it at Sandstone on its own system north of Ogden. Its market growth in that area must exactly pace the increasing requirements of Trans-Canada. In view of the eastern Canadian growth rate to which we have already referred, this is most unlikely. If Northern Natural's growth fails to parallel that of Trans-Canada, it will have to add additional facilities in order to be able to transport the "excessive" Canadian gas south to Northern Transportation at Ogden.

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[9] Section 3, Chap. 60, Revised Statutes of Canada, and Schedule A, Tariff Item 70905-1.

## ADDITIONAL SUPPLY AND FLEXIBILITY

There are several additional considerations which in our view compel the conclusion that the Great Lakes proposal, rather than the Northern proposal or any of its modifications, is more consistent with the public convenience and necessity of United States consumers. Stated generally, the Great Lakes' proposal alone will offer the possibility of providing those consumers with an additional source of supply in the event of national or local emergency affecting domestic production and it will provide a basis for further competition in the midwest.

The capacity of the Great Lakes project can, with the addition of compression alone, be increased to approximately 860,000 Mcf per day. Since approximately 734,000 Mcf per day will be delivered through that line in the fifth year of operation, and since, as we find, only that delivery is necessary to support the economic feasibility of the line, it is apparent that there will be some cheap expansibility available. This expansibility will potentially be available for utilization by domestic pipelines if such use would be consistent with the best interests of their customers. We think it is significant that in the event of an emergency situation affecting domestic production those pipelines presently serving the midwestern United States may well be able, with relative ease and nominal expense, to take advantage of Great Lakes' ability to transport additional volumes of Canadian gas. The benefit to our national security from this potential cannot be overstated. Moreover, we cannot ignore the fact that the Great Lakes line may well serve as a competitive stimulus in the Midwest. Indeed, it was largely this consideration which prompted the state commissions of Wisconsin and Michigan to intervene on behalf of Great Lakes. In addition, Great Lakes is strategically located so as to be able advantageously to make available to Michigan Consolidated, Michigan Wisconsin, and Northern Natural itself, an additional and prolific source of supply. As to Michigan Consolidated, we have already noted the fact that Great Lakes would parallel the Michigan Consolidated system between the Upper Peninsula and the Detroit area, thus permitting Michigan Consolidated to more efficiently fulfill its distribution responsibilities. As to Michigan Wisconsin, the Great Lakes project offers the considerable advantage of passing through its huge Michigan storage area. This, of course, will permit Michigan Wisconsin, should its own ability to deliver domestic production into its storage area be impeded by national emergency or for any other reason, to take advantage of the Great Lakes capacity.

Finally, the Great Lakes' capacity could well prove to be an economical source of additional gas for Northern itself since, if the occasion arose, it could utilize those supplies to serve increasing market requirements on the northern end of its system. Great Lakes has indicated that were it to be so utilized by Northern, the latter would affect a cost savings of approximately $1,657,754 annually, without considering the additional savings to all customers of Great Lakes that would be realized through the increased use of its line. Northern disputes this and contends instead that to so utilize Great Lakes would cost it $1,789,805 more annually than were it to increase deliveries of its domestic reserves. It is not necessary for us here to determine which of these contentions is appropriate but we do think it significant that in challenging the Great Lakes assertion Northern found it necessary to reduce its prior estimate of the additional facilities that would be required south of Ogden to move additional gas to the northern end of its system from $73,471,600 to $49,867,000. Whatever the appropriate figure would be, it is clear that these additional facilities south of Ogden, as well as the major portion of the $29 million investment said to be required north of Ogden, would be necessary only in the event that Northern were to rely solely on its domestic reserves.

These considerations would require, as well, rejection of both the staff's "project" and Northern's modified project, were we asked to certificate either. Northern, it should be noted, does not ask that we certificate its modified proposal for it frankly concedes that it is inferior to the proposal for which it seeks a certificate due to the use of 30-inch pipe from Emerson, which, although permitting short-term savings, would not be able to accommodate the anticipated long-term volumes of Canadian gas that will be delivered through that segment. We must, of course, be no less mindful of the staff's proposal than of any of the others. For even though we could not certificate the staff's proposal as is, if it were more consistent with the public interest of United States consumers we would be compelled to deny each of the pending applications. However, as already indicated, we consider both the staff proposal and Northern's modified proposal inferior to that of Great Lakes. Each would deny domestic consumers the benefit of an additional supply of gas that would be available both for competitive purposes and as emergency backup in the event of a national emergency or localized difficulty on domestic production. Moreover, each, because they involve exchange-displacements and would, therefore, result in the imposition of the 3 cent per Mcf duty on eastern Canadian consumers, is not supported by an adequate market showing. One asserted advantage of the staff proposal is that Midwestern will be supplying a transportation service rather than having to purchase Canadian gas which the staff considers high-priced. But the average initial rate, at 100 percent load factor, will be 27.29 cents per Mcf (between 1971 and 1975 it will be 28.63), and, since Midwestern presently purchases the entire gas requirements of its northern system from Trans-Canada, the additional purchase of 116,332 Mcf per day (representing 113,000 Mcf per day to be sold to Michigan Wisconsin and the 3,332 Mcf per day required for compressor fuel for this additional sale) should not appreciably increase its average purchase gas cost. In any event, Michigan Wisconsin will be purchasing the 113,000 Mcf per day under Midwestern's existing CD rate schedule.

Whether the cheap expansibility of the Great Lakes' facilities will ultimately be used to serve increased loads in the United States or be devoted to Canadian markets, of course, is not before us at this time. A decision on this matter must await consideration of future applications, at which time we will focus on all of the pertinent considerations as required by the Natural Gas Act.

## OTHER MATTERS

The State of Texas, the Texas Independent Producers & Royalty Owners Association, and the Independent Petroleum Association of America question the need and desirability for the additional importations involved. It is contended that neither application should be approved prior to the correlation of our natural gas import policy with the Mandatory Oil Import Program. For, it is argued, the production of oil and gas are interrelated to the point where the importation of additional gas would have a depressing effect upon domestic oil and gas exploration to the detriment of the national security. Further, we are told that we should not rely upon a supply that is under the control of a foreign government. As a minimum, it is argued that natural-gas imports should not be permitted to exceed the growth rate of domestic production.

Section 3 of the Natural Gas Act provides that the Commission shall issue an order permitting the importation of gas unless it finds that the proposed importation "will not be consistent with the public interest." We have already discussed the advantages inherent in the Great Lakes project, which, not in small part, is the furtherance of our own national security interests. Thus, we disagree with the basic premise of the interveners. Indeed, we have already considered, and rejected, each of the arguments which they here make. See: *Pacific Gas Transmission Co.*, 24 FPC 134, 138 (1960); *The Montana Power Company*, 35 FPC 191 (1966); *Pacific Gas Transmission Company*, 35 FPC 1003, Opinion No. 495, Docket No. CP65-213, *et al.*, June 15,

1966. Here the main Canadian supply (the gas to be transported for Trans-Canada) not only is supported by long-term contracts which contain an appropriate minimum billing provision, but Trans-Canada as half owner of the Great Lakes line has a vital interest in that project's viability.

At the time of the *Montana* case we noted that natural gas imported from Canada was averaging 2.48 percent of domestic market production (35 FPC at p. 195). On the basis of the year 1965 the Canadian imports of 404,686 M²cf were approximately 2.5 percent of domestic production.[10] With approval of this project, importation will be increased 62,050 M²cf annually, or .39 percent of the 1965 domestic production.

Our decision here is not intended to commit the Commission to any long-range policy with respect to the importation of natural gas; rather, it is simply consistent with our past treatment of import proposals where we have looked at each one on its merits. In this particular case only through the certification of the Great Lakes proposal can we take advantage of the most efficient utilization of continental reserves, and only the Great Lakes' proposal enjoys the cheap expansibility to which we have already referred.[11] Therefore, our action today, rather than committing policy down the road, is designed to afford us the flexibility to act in the long-term best interests of the United States. Future imports, of course, will be subject to the surveillance of this Commission and will be considered in the light of the entire public interest including the public interest in continued domestic exploration for new gas reserves.

As noted earlier Panhandle contends that rather than transporting gas through the United States, the looping of the existing Canadian line would be more beneficial to Trans-Canada and its customers. On May 22, 1967, Panhandle reiterated this contention by requesting the reopening of these proceedings to permit the consideration of several alternatives to the Great Lakes line that recently have been offered before the National Energy Board. Both Panhandle's recent petition and its earlier contention are based on an incorrect premise, *to wit*, that in carrying out our responsibilities under Section 7 of the Natural Gas Act this Commission must consider proposals which while arguably beneficial to foreign nationals have no effect on the public convenience and necessity of United States consumers. It follows, therefore, that it would not be appropriate for us to consider, in our comparative analysis, projects that would be wholly constructed outside of the United States, and Panhandle's petition will, therefore, be denied.

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[10] Natural Gas Section of Bureau of Mines Minerals Yearbook for 1965, U.S. Department of Interior, pp. 2, 6.

[11] The capacity of the Northern proposal is, of course, limited by the capacity of the Northern Natural system. As already noted, merely to accommodate the delivery of the Canadian gas here at issue into its system at Sandstone, Northern Natural would have to expend in excess of $14 million.

Further, we have considered Panhandle's objections to Great Lakes' departure from the Seaboard formula [12] in setting its rate design and find that departure to be justified. Great Lakes divided cost of fuel and losses between demand and commodity on an as-billed basis, and assigned two-thirds of all other costs to demand and one-third to volume. Panhandle argues that Great Lakes has not justified its failure to divide fixed costs equally between demand and commodity. That is, Panhandle contends that Great Lakes' commodity charge is too low. Of course, a lower commodity charge is to the advantage of a pipeline that is desirous of competing for industrial loads and since the record establishes that without that departure Great Lakes would be unable to compete with coal for such loads, a departure from the Seaboard allocation formula appears to be appropriate.

Northern contends that Great Lakes is not a qualified applicant because the equal ownership of its stock by Trans-Canada and American Natural might result in a deadlock necessitating invocation of the arbitration provision in their contract which, Northern asserts, probably is unenforceable under Delaware law as an improper delegation of the authority of the directors. We do not share Northern's concern. First, matters of volume and rates, at least initially, are covered by long-term (25 year) contracts. Secondly, we do not agree with Northern's construction of Delaware law. In *Ringling* v. *Ringling Bros.—Barnum & Bailey Com. Shows*, 29 Del. Ch. 318, 49 A. 2d 603, modified 20 Del. Ch. 53 A. 2d 441 (Sup. Ct. 1947), relied upon by Northern, an arbitration agreement controlling the votes of the directors was upheld, the court stating: "Reasonable provisions for cases of failure of the group to reach a determination because of an even division in their ranks seem unobjectionable." (53 A. 2d at p. 447) We perceive nothing objectionable about the arbitration agreement at bar.

At the suggestion of the staff we shall condition the certificate issued to Great Lakes to provide that the company submit for the Commission's approval a financing plan providing that common equity be maintained at not less than 15 percent of total capitalization and that no dividends be paid on the common stock as long as the long-term debt exceeds 75 percent of the total capitalization. We do not think it necessary, as staff suggests, that the promissory notes be made convertible to common stock.

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[12] *Atlantic Seaboard Corp.*, 11 FPC 43.

*The Commission further finds:*

(1) Great Lakes, Midwestern and Northern Natural are "persons" within the meaning of Section 2(1) and Section 3 of the Natural Gas Act.

(2) Great Lakes, a Delaware corporation, having its principal place of business in Wilmington, Delaware, upon construction and operation of the facilities and commencement of the sales proposed by it in Docket No. CP66–110 will become a "natural-gas company" within the meaning of the Natural Gas Act.

(3) Midwestern, a Delaware corporation with its principal place of business at Houston, Texas is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission. *Midwestern Gas Transmission Company* (21 FPC 653).

(4) Michigan Wisconsin, a Delaware corporation with its principal place of business at Detroit, Michigan is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(5) Northern Natural, a Delaware corporation with its principal place of business at Omaha, Nebraska is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(6) Northern Transportation, a Delaware corporation with its principal place of business at Omaha, Nebraska upon construction and operation of the facilities and commencement of the sales proposed by it in Docket No. CP66–213 would become a "natural-gas company" within the meaning of the Natural Gas Act.

(7) The facilities hereinbefore described and as more fully described in the applications and the record in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas proposed are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(8) Each of the above-named applicants is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) The applications of Northern Natural in Docket No. CP66–212 and Northern Transportation Company in Docket No. CP66–213 under Section 7 of the Natural Gas Act have not been shown to be required by the present or future public convenience and necessity.

(10) The importation and exportation of natural gas as proposed by Northern Transportation in Docket No. CP66–215 under Section

3 of the Natural Gas Act and the construction and operation of facilities at the border of the United States near Emerson, Manitoba, near Sault Ste. Marie, Ontario and near St. Clair, Michigan pursuant to Executive Order 10485, as proposed in Docket No. CP66-214, are not consistent with the public interest.

(11) As proposed by Great Lakes in Docket No. CP66-110, the construction and operation of facilities, the transportation of 677 $M^2$cfd (14.73 psia) of natural gas for Trans-Canada, the transportation of 87.6 $M^2$cfd purchased from Trans-Canada, and the sale of 57 $M^2$cfd (14.73 psia) to Michigan Consolidated are required by the public convenience and necessity as hereafter ordered and conditioned.

(12) As proposed by Midwestern in Docket No. CP66-119 the construction and operation of facilities, the transportation of 116.332 $M^2$cfd of natural gas to be purchased from Trans-Canada at a point near Emerson, Manitoba and the sale by Midwestern of 113 $M^2$cfd to Michigan Wisconsin at Marshfield, Wisconsin are required by the public convenience and necessity as hereafter ordered and conditioned.

(13) As proposed by Michigan Wisconsin in Docket No. CP66-109, the construction and operation of facilities, and the transportation and sale of an additional 113 $M^2$cfd to be purchased from Midwestern at Marshfield, Wisconsin, including a sale of 113 $M^2$cfd to Trans-Canada in the first year and 63 $M^2$cfd in the second year, are required by the public convenience and necessity as hereafter ordered and conditioned.

(14) The importation of an additional 116.332 $M^2$cfd by Midwestern from Trans-Canada at a point near Emerson, Manitoba as proposed in Docket No. CP66-121, and the construction and operation of facilities by Midwestern at the border of the United States near Emerson, Manitoba pursuant to Executive Order 10485 as proposed in Docket No. CP66-120, upon which the Secretary of State and the Secretary of Defense have made favorable recommendations, are consistent with the public interest.

(15) The importation of 764.6 $M^2$cfd by Great Lakes in Docket No. CP66-112 at a point near Emerson, Manitoba and the exportation of 677 $M^2$cfd at points near Sault Ste. Marie and St. Clair, Michigan, and the construction and operation of facilities by Great Lakes in Docket No. CP66-111 at the borders of the United States at Emerson, Sault Ste. Marie and St. Clair, pursuant to Executive Order 10485, upon which the Secretary of State and the Secretary of Defense have made favorable recommendations, are consistent with the public interest.

*The Commission orders:*

(A) The applications of Northern Natural in Docket No. CP66–212 and Northern Transportation in Docket Nos. CP66–213, CP66–214 and CP66–215 are denied.

(B) Certificates of public convenience and necessity are issued: to Great Lakes in Docket No. CP66–110 for the construction and operation of facilities, the transportation of 677 $M^2$cfd (14.73 psia) of natural gas for Trans-Canada, the transportation of 87.6 $M^2$cfd purchased from Trans-Canada and the sale of 57 $M^2$cfd (14.73 psia) to Michigan Consolidated; to Midwestern in Docket No. CP66–119 for the construction and operation of facilities, the transportation of 116.332 $M^2$cfd of natural gas, and the sale of 113 $M^2$cfd to Michigan Wisconsin; and to Michigan Wisconsin in Docket No. CP66–109 for the construction and operation of facilities and the transportation and sale of natural gas, including 113 $M^2$cfd to Trans-Canada in the first year and 63 $M^2$cfd in the second year; all as described above and as more fully described in the applications in this proceeding upon the terms and conditions of this order.

(C) The certificates issued in Paragraph (B) and the rights granted thereunder are conditioned upon compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the terms and conditions set forth in paragraphs (a), (c), (e), (f) and (g) of Section 157.20 of such Regulations.

(D) The facilities proposed by Great Lakes shall be constructed in accordance with the time schedule proposed in this proceeding with the first year's construction being completed by November 1, 1967; the facilities proposed by Midwestern and Michigan Wisconsin shall be completed by November 1, 1967.

(E) Within 30 days of the issuance of this order Great Lakes shall submit for the Commission's approval a financing plan providing that common equity be maintained at not less than 15 percent of total capitalization and that no dividends be paid on the common stock as long as the long-term debt exceeds 75 percent of the total capitalization.

(F) Authorization is issued to Midwestern in Docket No. CP66–121 to import 116.332 $M^2$cfd to be received from Trans-Canada at a point near Emerson, Manitoba; and authorization is issued to Great Lakes in Docket No. CP66–112 to import 764.6 $M^2$cfd (87.6 $M^2$cfd to be purchased and 677 $M^2$cfd to be transported) from Trans-Canada at a point near Emerson, Manitoba and to export 677 $M^2$cfd at points near Sault Ste. Marie, Michigan and St. Clair, Michigan.

(G) Presidential Permits under Executive Order No. 10485 to construct, operate, maintain and connect the necessary facilities at the international border are issued to Great Lakes in Docket No. CP66-111 applicable to points near Emerson, Manitoba, and Sault Ste. Marie and St. Clair, Michigan and to Midwestern in Docket No. CP66-120 applicable to a point near Emerson, Manitoba as more fully described in the applications and in the evidence in these proceedings.

(H) Panhandle's petition to reopen proceedings is denied.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ORANGE AND ROCKLAND UTILITIES, INC., DOCKET NO. E-7348

### ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued June 20, 1967)

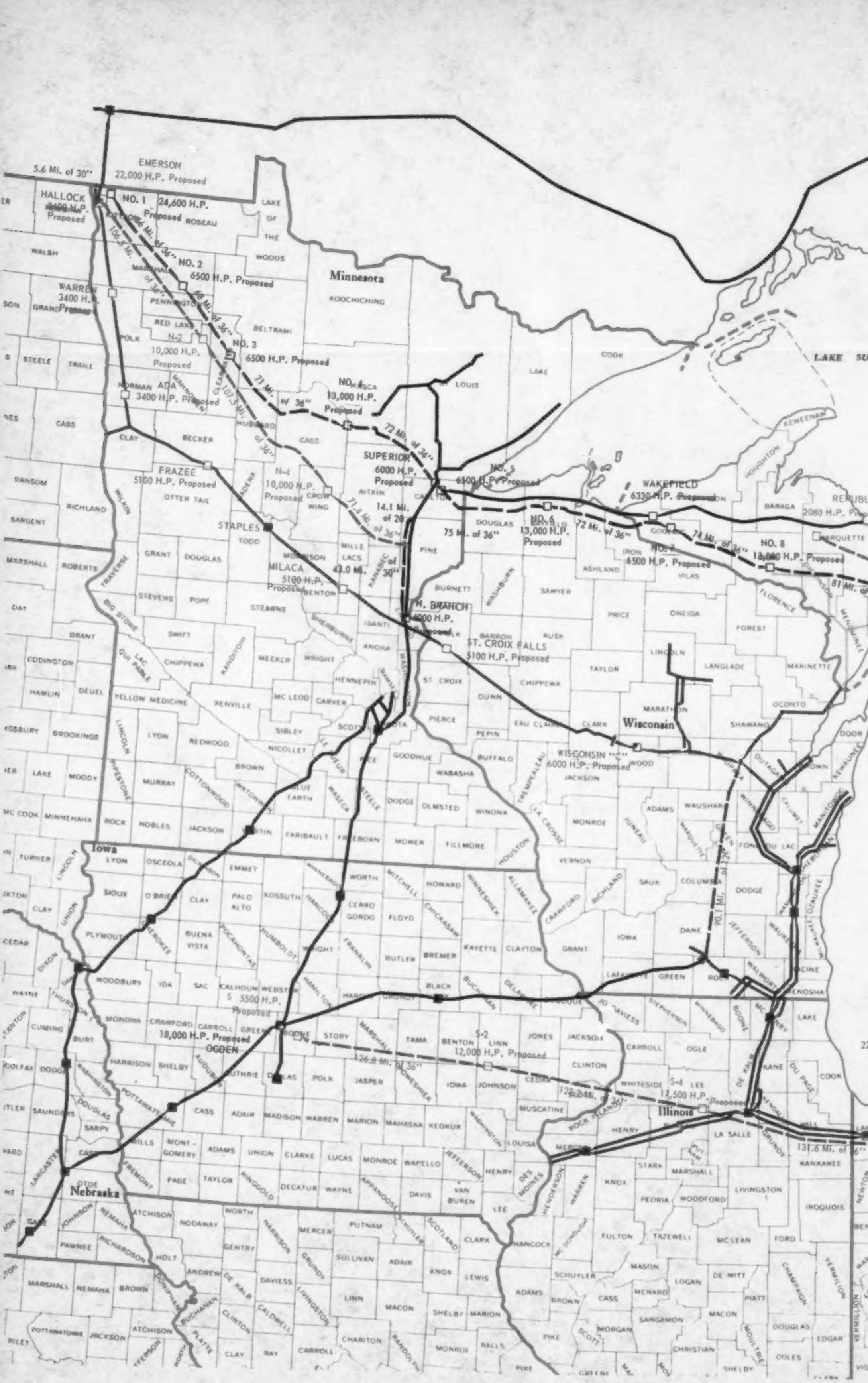
Orange and Rockland Utilities, Inc. (Applicant) filed an application on April 11, 1967, pursuant to Section 204 of the Federal Power Act for authority to issue short term Promissory Notes in the maximum principal amount of $35,000,000.

Orange and Rockland Utilities, Inc. is organized under the laws of the State of New York with its principal business office at Nyack, N.Y. and owns and operates an electric utility system serving all of Rockland County, most of Orange County and part of Sullivan County, all in New York. Its wholly-owned subsidiaries, Rockland Electric Company and Pike County Light and Power Company, operate electric utility systems in New Jersey and Pennsylvania, respectively, serving areas contiguous to that served by the parent company.

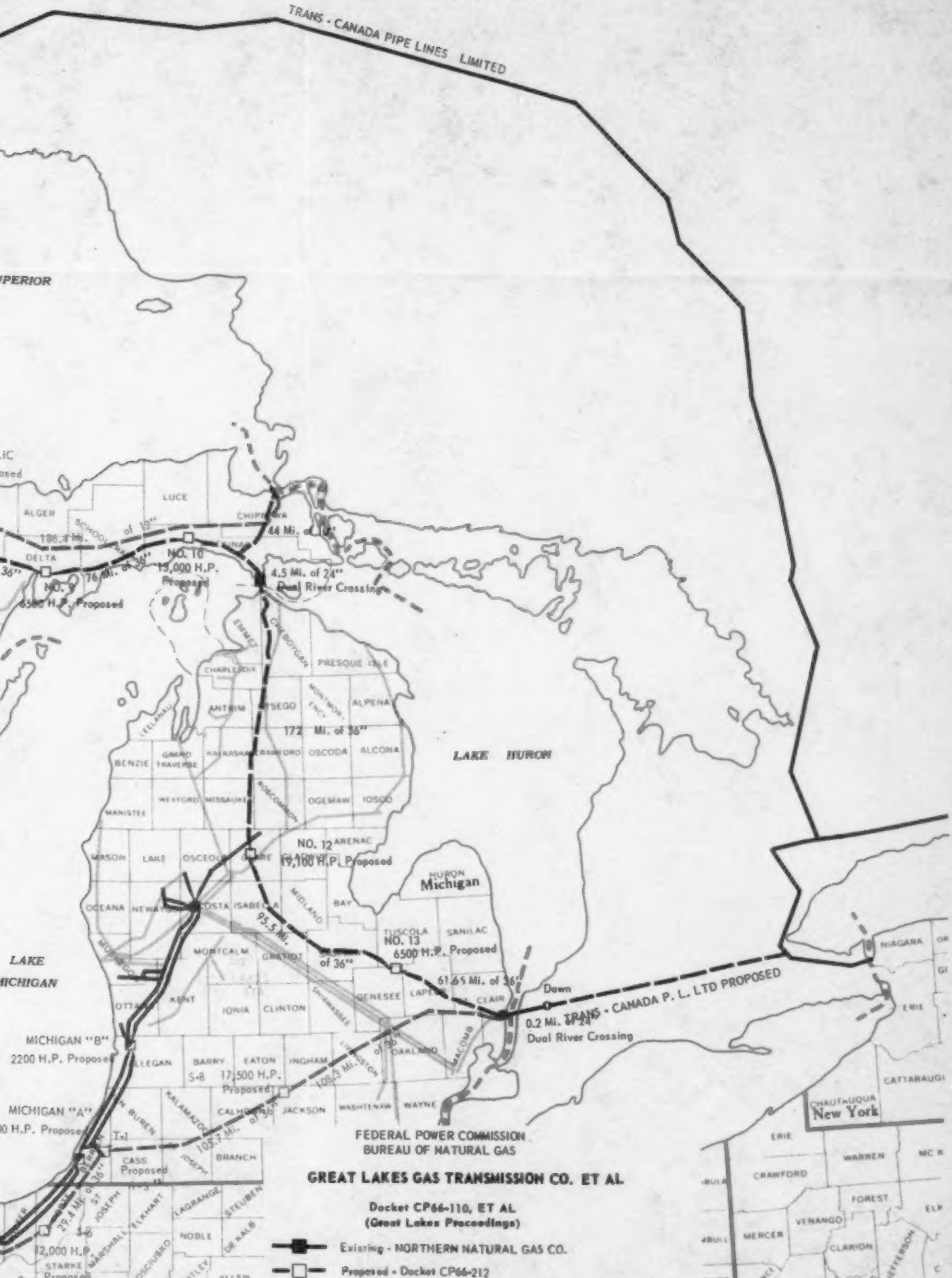
The notes are to be issued from time to time to commercial banks or similar institutions and will mature within one year from their dates of issuance and in any event no later than June 30, 1968. The notes will bear interest at not more than ¼% above the New York prime rate in effect at the time of the borrowings.

The new notes are to be issued to finance construction expenditures estimated at $19,629,900 in the remainder of 1967 and estimated at $13,789,000 in the first six months of 1968. The construction program includes a 195 mw generating unit to be installed in the Applicant's Lovett Plant by 1969. For this generating unit, the estimated costs for the remainder of 1967 total $9,673,000 and the estimated costs for the first half of 1968 total $8,107,000. The program also includes an estimated expenditure of $906,000 during the same periods in 1967, 1968, for construction of 6.4 miles of 500 KV line and 14.8 miles of 345 KV line (The Applicant's portion of the PJM—Con. Ed transmission line). The Applicant plans to issue long-term debt and/or equity securities in the last quarter of 1967 or in the first half of 1968. The permanent financing plus retained earnings are expected to be sufficient to pay off all notes outstanding.

Written notice of the application has been given to the New York Public Service Commission, the New Jersey Board of Public Utility Commissioners, the Pennsylvania Public Utility Commission, and to the Governor of each of those States. Notice was also published in the Federal Register on May 2,



5.6 Mi. of 30"
EMERSON
22,000 H.P. Proposed
HALLOCK
3400 H.P.
Proposed
NO. 1
24,600 H.P.
Proposed
ROSEAU
106.5 Mi.
of 36"
NO. 2
6500 H.P. Proposed
66 Mi. of 36"
WARREN
3400 H.P.
Proposed
N-2
10,000 H.P.
Proposed
NO. 3
6500 H.P. Proposed
107.5 Mi.
71 Mi. of 36"
ADA
3400 H.P. Proposed
NO. 4
13,000 H.P.
Proposed
72 Mi. of 36"
SUPERIOR
6000 H.P.
Proposed
NO. 5
6500 H.P. Proposed
WAKEFIELD
6330 H.P. Proposed
REPUBLIC
2080 H.P. Proposed
FRAZEE
5100 H.P. Proposed
N-4
10,000 H.P.
Proposed
71.4 Mi. of 36"
14.1 Mi.
of 20"
75 Mi. of 36"
NO. 6
13,000 H.P.
Proposed
72 Mi. of 36"
74 Mi. of 36"
NO. 7
6500 H.P. Proposed
NO. 8
13,000 H.P. Proposed
81 Mi. of
STAPLES
MILACA
5100 H.P.
Proposed
43.0 Mi. of 30"
N. BRANCH
4000 H.P.
Proposed
ST. CROIX FALLS
5100 H.P. Proposed
WISCONSIN "C"
6000 H.P. Proposed
90.1 Mi. of 1?"
S
5500 H.P.
Proposed
18,000 H.P. Proposed
OGDEN
S-2
12,000 H.P. Proposed
126.8 Mi. of 36"
128.3 Mi.
S-4
17,500 H.P. Proposed
131.6 Mi. of 36"
Minnesota
Wisconsin
Iowa
Illinois
Nebraska
LAKE SU
LAKE OF THE WOODS
KOOCHICHING
BELTRAMI
COOK
LAKE
ST. LOUIS
ITASCA
CASS
HUBBARD
BECKER
CLAY
NORMAN
MAHNOMEN
CLEARWATER
POLK
RED LAKE
PENNINGTON
MARSHALL
KITTSON
CROW WING
AITKIN
CARLTON
OTTER TAIL
WILKIN
WADENA
TODD
MORRISON
MILLE LACS
KANABEC
PINE
DOUGLAS
GRANT
STEVENS
POPE
STEARNS
BENTON
SHERBURNE
ISANTI
CHISAGO
ANOKA
TRAVERSE
BIG STONE
SWIFT
KANDIYOHI
MEEKER
WRIGHT
HENNEPIN
RAMSEY
WASHINGTON
LAC QUI PARLE
CHIPPEWA
YELLOW MEDICINE
RENVILLE
MC LEOD
CARVER
SCOTT
DAKOTA
SIBLEY
NICOLLET
LE SUEUR
RICE
GOODHUE
WABASHA
LINCOLN
LYON
REDWOOD
BROWN
PIPESTONE
MURRAY
COTTONWOOD
WATONWAN
BLUE EARTH
WASECA
STEELE
DODGE
OLMSTED
WINONA
ROCK
NOBLES
JACKSON
MARTIN
FARIBAULT
FREEBORN
MOWER
FILLMORE
HOUSTON
WALSH
GRAND FORKS
STEELE
TRAILL
CASS
RANSOM
RICHLAND
SARGENT
MARSHALL
ROBERTS
DAY
GRANT
CODINGTON
DEUEL
HAMLIN
BROOKINGS
KINGSBURY
LAKE
MOODY
MC COOK
MINNEHAHA
TURNER
LINCOLN
UNION
CLAY
DOUGLAS
BAYFIELD
ASHLAND
IRON
VILAS
GOGEBIC
ONTONAGON
HOUGHTON
KEWEENAW
BARAGA
MARQUETTE
DICKINSON
FLORENCE
FOREST
ONEIDA
PRICE
SAWYER
WASHBURN
BURNETT
POLK
BARRON
RUSK
ST CROIX
DUNN
CHIPPEWA
TAYLOR
LINCOLN
LANGLADE
MARINETTE
MENOMINEE
OCONTO
SHAWANO
MARATHON
CLARK
EAU CLAIRE
PIERCE
PEPIN
BUFFALO
TREMPEALEAU
JACKSON
WOOD
PORTAGE
WAUPACA
OUTAGAMIE
BROWN
DOOR
KEWAUNEE
MANITOWOC
CALUMET
WINNEBAGO
WAUSHARA
ADAMS
JUNEAU
MONROE
LA CROSSE
VERNON
MARQUETTE
GREEN LAKE
FOND DU LAC
SHEBOYGAN
OZAUKEE
WASHINGTON
DODGE
COLUMBIA
SAUK
RICHLAND
CRAWFORD
GRANT
IOWA
DANE
JEFFERSON
WAUKESHA
MILWAUKEE
RACINE
KENOSHA
WALWORTH
ROCK
GREEN
LAFAYETTE
LYON
OSCEOLA
DICKINSON
EMMET
WINNEBAGO
WORTH
MITCHELL
HOWARD
WINNESHIEK
ALLAMAKEE
SIOUX
O'BRIEN
CLAY
PALO ALTO
KOSSUTH
HANCOCK
CERRO GORDO
FLOYD
CHICKASAW
FAYETTE
CLAYTON
PLYMOUTH
CHEROKEE
BUENA VISTA
POCAHONTAS
HUMBOLDT
WRIGHT
FRANKLIN
BUTLER
BREMER
WOODBURY
IDA
SAC
CALHOUN
WEBSTER
HAMILTON
HARDIN
GRUNDY
BLACK HAWK
BUCHANAN
DELAWARE
DUBUQUE
MONONA
CRAWFORD
CARROLL
GREENE
BOONE
STORY
MARSHALL
TAMA
BENTON
LINN
JONES
JACKSON
HARRISON
SHELBY
AUDUBON
GUTHRIE
DALLAS
POLK
JASPER
POWESHIEK
IOWA
JOHNSON
CEDAR
CLINTON
POTTAWATTAMIE
CASS
ADAIR
MADISON
WARREN
MARION
MAHASKA
KEOKUK
WASHINGTON
MUSCATINE
SCOTT
MILLS
MONTGOMERY
ADAMS
UNION
CLARKE
LUCAS
MONROE
WAPELLO
JEFFERSON
HENRY
LOUISA
DES MOINES
FREMONT
PAGE
TAYLOR
RINGGOLD
DECATUR
WAYNE
APPANOOSE
DAVIS
VAN BUREN
LEE
JO DAVIESS
STEPHENSON
WINNEBAGO
BOONE
MC HENRY
LAKE
CARROLL
OGLE
DE KALB
KANE
DU PAGE
COOK
WHITESIDE
LEE
ROCK ISLAND
HENRY
BUREAU
LA SALLE
GRUNDY
WILL
KANKAKEE
MERCER
STARK
PUTNAM
MARSHALL
LIVINGSTON
IROQUOIS
KNOX
WARREN
HENDERSON
HANCOCK
MC DONOUGH
FULTON
PEORIA
WOODFORD
TAZEWELL
MC LEAN
FORD
VERMILION
CHAMPAIGN
DE WITT
PIATT
SCHUYLER
MASON
LOGAN
MENARD
MACON
ADAMS
BROWN
CASS
MORGAN
SANGAMON
MOULTRIE
DOUGLAS
EDGAR
PIKE
SCOTT
CHRISTIAN
SHELBY
COLES
CLARK
GREENE
CEDAR
DIXON
DAKOTA
THURSTON
WAYNE
STANTON
CUMING
BURT
COLFAX
DODGE
WASHINGTON
BUTLER
SAUNDERS
DOUGLAS
SARPY
SEWARD
LANCASTER
CASS
OTOE
SALINE
GAGE
JOHNSON
NEMAHA
PAWNEE
RICHARDSON
MARSHALL
NEMAHA
BROWN
DONIPHAN
POTTAWATOMIE
JACKSON
ATCHISON
JEFFERSON
LEAVENWORTH
RILEY
ATCHISON
NODAWAY
WORTH
HARRISON
MERCER
PUTNAM
SCHUYLER
SCOTLAND
CLARK
HOLT
GENTRY
GRUNDY
SULLIVAN
ADAIR
KNOX
LEWIS
ANDREW
DE KALB
DAVIESS
LIVINGSTON
LINN
MACON
SHELBY
MARION
BUCHANAN
CLINTON
CALDWELL
CHARITON
RANDOLPH
MONROE
RALLS
PLATTE
CLAY
RAY
CARROLL
PIKE


TRANS - CANADA PIPE LINES LIMITED
UPERIOR
LAKE HURON
LAKE MICHIGAN
Michigan
New York
Indiana
LUCE
ALGER
CHIPPEWA
DELTA
44 Mi. of 12"
186.4 Mi.
76 Mi. of 36"
NO. 10
15,000 H.P.
Proposed
NO. 9
6500 H.P. Proposed
4.5 Mi. of 24"
Dual River Crossing
EMMET
CHEBOYGAN
PRESQUE ISLE
CHARLEVOIX
ANTRIM
OTSEGO
MONTMORENCY
ALPENA
LEELANAU
172 Mi. of 36"
BENZIE
GRAND TRAVERSE
KALKASKA
CRAWFORD
OSCODA
ALCONA
MANISTEE
WEXFORD
MISSAUKEE
ROSCOMMON
OGEMAW
IOSCO
MASON
LAKE
OSCEOLA
CLARE
GLADWIN
ARENAC
NO. 12
19,100 H.P. Proposed
OCEANA
NEWAYGO
MECOSTA
ISABELLA
MIDLAND
BAY
HURON
95.5 Mi.
MUSKEGON
MONTCALM
GRATIOT
SAGINAW
of 36"
TUSCOLA
SANILAC
NO. 13
6500 H.P. Proposed
61.65 Mi. of 36"
OTTAWA
KENT
IONIA
CLINTON
SHIAWASSEE
GENESEE
LAPEER
ST. CLAIR
Dawn
MICHIGAN "B"
2200 H.P. Proposed
ALLEGAN
BARRY
EATON
INGHAM
LIVINGSTON
OAKLAND
MACOMB
0.2 Mi. of 24"
Dual River Crossing
TRANS - CANADA P. L. LTD PROPOSED
S-8
17,500 H.P.
Proposed
108.3 Mi.
MICHIGAN "A"
H.P. Proposed
VAN BUREN
KALAMAZOO
CALHOUN
JACKSON
WASHTENAW
WAYNE
T-1
CASS
Proposed
ST JOSEPH
105.7 Mi. of 36"
BRANCH
29.4 Mi. of 36"
S-6
2,000 H.P.
STARKE
Proposed
PULASKI
ST JOSEPH
MARSHALL
ELKHART
LAGRANGE
STEUBEN
NOBLE
DE KALB
KOSCIUSKO
WHITLEY
ALLEN
FULTON
JASPER
WHITE
CASS
MIAMI
WABASH
HUNTINGTON
WELLS
ADAMS
CARROLL
HOWARD
GRANT
BLACKFORD
JAY
TIPPECANOE
CLINTON
TIPTON
MADISON
DELAWARE
RANDOLPH
MONTGOMERY
BOONE
HAMILTON
HENRY
WAYNE
HENDRICKS
MARION
HANCOCK
PUTNAM
RUSH
FAYETTE
UNION
MORGAN
JOHNSON
SHELBY
CLAY
FRANKLIN
NIAGARA
ERIE
CATTARAUGUS
CHAUTAUQUA
ERIE
WARREN
CRAWFORD
FOREST
ELK
MERCER
VENANGO
CLARION
JEFFERSON
LAWRENCE
BUTLER
ARMSTRONG
INDIANA
BEAVER
HANCOCK
ALLEGHENY
JEFFERSON
BROOKE
WASHINGTON
WESTMORELAND
OHIO
MARSHALL
GREENE
FAYETTE
SOMERSET
WETZEL
MONONGALIA
PRESTON
GARRETT
MARION
DODDRIDGE
HARRISON
TAYLOR
BARBOUR
TUCKER
GRANT

FEDERAL POWER COMMISSION
BUREAU OF NATURAL GAS

**GREAT LAKES GAS TRANSMISSION CO. ET AL**

**Docket CP66-110, ET AL**
**(Great Lakes Proceedings)**

| | |
|---|---|
| ━■━ | Existing - **NORTHERN NATURAL GAS CO.** |
| ━□━ | **Proposed - Docket CP66-212** |
| ◩ | **Proposed - Addition to Existing Station** |
| ━□━ | NORTHERN NATURAL GAS TRANSPORTATION CO.<br>Proposed - Docket CP66-213 |
| ━■━ | Existing - MIDWESTERN GAS TRANSMISSION CO. |
| ━□━ | Proposed - Docket CP66-119 |
| ◩ | Proposed - Addition to Existing Station |
| ━□━ | **GREAT LAKES GAS TRANSMISSION CO.**<br>**Proposed - Docket - CP66-110** |
| ━■━ | Existing - MICHIGAN WISCONSIN PIPE LINE CO. |
| ━ ━ | Proposed - Docket CP66-109 |
| ◩ | Proposed - Addition to Existing Station |
| ■ | Existing Michigan Consolidated Gas Co. |

1967, (32 F.R. 6748), stating that any person desiring to be heard or to make any protest with reference to said application should on or before May 5, 1967, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No petition or protest or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued August 13, 1958 in the matters of *Orange and Rockland Utilities, Inc.* and *Rockland Electric Company*, in Docket No. E–6827 (20 FPC 205).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $35,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $35,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2).

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $35,000,000, outstanding at any one time, upon the terms and conditions and confined to the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of said Notes being not later than June 30, 1968.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHWESTERN POWER ADMINISTRATION, DOCKET NO. E-7172

### ORDER TEMPORARILY EXTENDING CONFIRMATION AND APPROVAL OF RATES AND CHARGES

(Issued June 20, 1967)

The Secretary of the Interior, acting on behalf of the Southwestern Power Administration (SWPA) and pursuant to The Flood Control Act of 1944 (58 Stat. 887) on March 16, 1967 filed a request for the extension of the Commission's confirmation and approval, which expires July 1, 1967, of rate schedules and contractual rates and charges applicable to the integrated system of SWPA.

The Secretary requests that in the event action is not taken by the Commission before the expiration date of these rate schedules and contractual rates and charges that temporary extension of confirmation and approval be granted for the existing rates until Commission's final action is taken. The Commission has not completed its review of these rates.

*The Commission orders:*

The confirmation and approval of SWPA's Rate Schedules F-1, IC, EE and P-2 and the contractual rates and charges set forth in contracts between SWPA and Texas Power and Light Company (Contract Ispa-177), Southwestern Electric Power Company (Contract 14-02-001-782) and Oklahoma Gas and Electric Company and Public Service Company of Oklahoma, (Contract Ispa-356) are hereby temporarily extended to September 30, 1967 or to such earlier date as the Commission's final action is taken.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP67-317

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1967)

On April 28, 1967, Algonquin Gas Transmission Company (Applicant) filed in Docket No. CP67-317 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 1.07 mile of 30-inch O.D. pipeline under the Hudson River near Stony Point and Buchanan in Rockland and Westchester Counties, New York, all as more fully described in the application.

The proposed pipeline will loop two 24-inch O.D. pipelines already in operation between Stony Point and Buchanan, New York, and provide assurances of the continuity of natural gas service to Applicant's customers. The proposed construction will also return Applicant's system to its original comparative standby capacity.

The estimated cost of the proposed pipeline is $2,007,000, which cost will be financed through the use of retained earnings, short term loans if required, and finally by inclusion as necessary in Applicant's next long term issue of debt securities.

Due notice of the filing was issued on May 11, 1967. No petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on June 15, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Algonquin Gas Transmission Company, a Delaware corporation, having its principal place of business in Boston, Massachusetts, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of February 26, 1951, in Docket No. G–1319 (10 FPC 35).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of the Commission's Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to the Algonquin Gas Transmission Company authorizing the construction and operation of the facilities and the transportation of natural gas in interstate commerce as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, by January 1, 1968.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP67-271

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 21, 1967)

On March 22, 1967, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP67-271 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 11.78 miles of 4½-inch natural gas pipeline and metering and regulating facilities in Butte County, South Dakota, and Crook County, Wyoming, for the transportation and delivery of natural gas to International Minerals and Chemical Corporation (International) near Colony, Wyoming, on an interruptible basis, all as more fully set forth in the application.

Applicant proposes to construct and operate a lateral pipeline looping its existing pipeline used to serve the bentonite processing plants of National Lead Company and Archer-Daniels-Midland Company near Colony, Wyoming. The new line and metering and regulating facilities will be used to deliver natural gas to International for bentonite processing, and said line will also provide the additional capacity necessary to serve additional fuel requirements of Archer-Daniels-Midland Company and other customers who may desire service in the area.

International's estimated third year maximum day and annual natural gas requirements are 1,500 Mcf and 300,000 Mcf, respectively. Existing peak day obligations in the area are 1,400 Mcf of natural gas and are anticipated to increase to 1,800 Mcf in the near future.

The proposed pipeline is estimated to cost $140,400 and the metering station is estimated to cost $9,850. The facilities will be financed with internally generated funds and/or short term bank loans and with an advance in aid of construction by International of $73,500 to be repaid with a credit on monthly bills.

The gas authorized to be transported and delivered to International will be sold at the rate of 31.25 cents per Mcf at 13.2125 psia.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 15, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 22, 1946 in Docket No. G-402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation and delivery of natural gas in interstate commerce subject to the jurisdiction of the Com-

mission, and the construction and operation thereof and the transportation and delivery of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of facilities and transportation and delivery of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon the Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities and the transportation and delivery of natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized herein shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act within six months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NATURAL GAS BOARD OF THE TOWN OF VINA, ALABAMA, AND TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., DOCKET NO. CP67-283

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 22, 1967)

On March 29, 1967, Natural Gas Board of the Town of Vina, Alabama (Applicant) filed in Docket No. CP67-283 an application and a supplement thereto on May 1, 1967 pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Pipeline Company, a Division of Tenneco Inc., (Respondent) to establish physical connection of its transmission facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution by means of such facilities, all as more fully set forth in the application and supplement thereto.

Applicant proposes to construct and operate a lateral pipeline extending from a point of connection with Respondent's gas transmission pipeline approximately 2 miles to the Town of Vina, Alabama and a gas distribution system within the Town.

Applicant estimates the Maximum Daily and Maximum Annual Requirements for the first three years as follows:

| Year | Maximum Daily Requirements (Mcf) | Maximum Annual Requirements (Mcf) |
|---|---|---|
| 1st | 57.6 | 5,329 |
| 2nd | 92.0 | 8,102 |
| 3rd | 150.2 | 12,946 |

Applicant estimates the total cost of the proposed construction at approximately $80,000, which cost is to be financed by the issuance and sale of Natural Gas Revenue Bonds.

On April 27, 1967, Respondent filed an answer to the application in the proceeding stating it does not oppose the granting of the application for an order directing it to render the service requested.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on April 14, 1967 (32 F.R. 6010). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

*The Commission finds:*

(1) Tennessee Gas Pipeline Company, a Division of Tenneco Inc., a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947 in Docket No. G-910 (6 FPC 777).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant, under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 151 Mcf per day of natural gas for distribution and resale, as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in the town of Vina, Alabama within one year from the date of the issuance of this order.

**(5) The requirement that Respondent serve Applicant, as requested will not place an undue burden upon it nor impar its ability to render adequate service to its existing customers.**

***The Commission orders:***

**(A) Tennessee Gas Pipeline Company, a Division of Tenneco Inc., is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver up to 151 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent and filed in accordance with the Commission's Regulations, for distribution and resale, as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.**

**(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.**

**(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## PUBLIC INFORMATION, DOCKET NO. R-326

## ORDER NO. 349

### AMENDING STATEMENT OF ORGANIZATION TO MORE FULLY DESCRIBE THE FUNCTIONS AND RESPONSIBILITIES OF THE OFFICE OF PUBLIC INFORMATION

**(Issued June 22, 1967)**

**For many years the Commission has maintained, in its Office of Public Information, a specially staffed and equipped public reference room where the public may examine and obtain copies of material in the Commission's public files and records. The heretofore published organization statement describing the Office of Public Information (18 CFR 3.4(e)(11)), states only that the Office is responsible for the public information activities of the Commission. Both the letter and the spirit, however, of the Freedom of Information Act (P.L. 89-487) require that the responsibilities and functions of the Office be described in greater detail so that all members of the public, not only those practitioners and members of the press who are already familiar with the operation of the Office, may know of the services it is designed to perform. Accordingly,**

***The Commission finds:***

**The amendment to its general rules here adopted is necessary and appropriate in the administration of the Federal Power and Natural Gas Acts.**

***The Commission*, acting pursuant to authority granted by section 309 of the Federal Power Act and section 16 of the Natural Gas Act (16 U.S.C. 825h; 15 U.S.C. 717o) and in accordance with section 552 of Title 5 of the United States Code, as amended by P.L. 89-487, 80 Stat. 250, *orders:***

**(A) Effective upon the issuance of this order, Part 3, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations is amended by revising subparagraph (11) of § 3.4(e) to read as follows:**

**§ 3.4 Organization.**

* * * * * * *

**(e) *The staff.***

* * * * * * *

**(11) The Office of Public Information.**

**(i) *Responsibilities.* (*a*) The Director of Public Information plans, directs and controls the programs and activities of the Office of Public Information, and in addition is responsible for: insuring that the information provided to the public is in compliance with the policies and interpretations established in accordance with the law on Freedom of Information; clearing speeches and material prepared by the staff for publication; establishing and maintaining liaison with embassies of foreign governments on matters of concern to the Commission, and with the Department of State and the Agency for International Development with respect to foreign visitors; making arrangements for lectures and tours in the electric power and natural gas industries for foreign visitors; arranging press conferences and radio and television appearances for the Commission or Chairman; attending Commission meetings to achieve necessary insight and familiarity with matters to be released as public information; maintaining liaison with public information representatives of electric and natural gas utilities, other Federal government agencies, state and local governments, and trade associations; and advising the Commission, Chairman, and Executive Director on public information matters.**

**(*b*) The Office of Public Information is responsible for all functions required in carrying out the Commission's public information program including: liaison for the Commission on public information matters with members of Congress, the press, and the natural gas, electric power and related industries, with professional organizations, financial houses, and the public, including educational institutions, students, libraries, and commercial, domestic and industrial consumers of electric power and natural gas; control of the issuance of maps and publications; final editorial clearance of material prior to publication; preparation of announcements and press releases regarding official Commission activities; and provisions for information and reference services to the press, industry representatives and the public.**

**(ii) *Functions.* The Office of Public Information provides liaison for the Commission on matters of public information; prepares announcements concerning Commission actions, activities, decisions and opinions; prepares and issues all press releases on Commission activities; collects, compiles, prepares and distributes the Commission's Annual Report to the Congress; assists in determining the need for and preparation of Commission reports and publications; recommends to the Commission editorial presentation, format and typography of reports and publications; and is responsible for the final coordination and editorial review of reports and statistical matter prior to publication for conformance with Commission direction; sells, distributes and publicizes Commission reports and publications, including automatic data processing tapes, printouts, and listings, and collects and accounts for money collected from such sales; maintains a public reference room and provides to the public,**

members of the press, and the industry access to the public files and records of the Commission as defined in the Commission's Rules of Practice and Procedure, including facilities and services for obtaining copies of such information; and answers written, personal, and telephonic inquiries relating to all phases of the Commission's activities and matters pending before the Commission. The Director of Public Information and designated assistants act as consultants to the Commission, to individual Commissioners, and to members of the staff concerning matters of public information.

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CRISP COUNTY POWER COMMISSION v. GEORGIA POWER COMPANY, DOCKET NO. E-7120

### SUPPLEMENTAL ORDER REQUIRING CONSTRUCTION OF INTERCONNECTION FACILITIES, GRANTING PETITION FOR LEAVE TO INTERVENE, REOPENING RECORD, AND DENYING PETITIONS FOR LEAVE TO FILE COMMENTS

(Issued June 23, 1967)

On December 5, 1966, we issued a Tentative Opinion No. 508 in this proceeding, which ordered an interconnection of the facilities of Georgia Power Company with the facilities of the Crisp County Power Commission (Crisp County), pursuant to Section 202(b) of the Federal Power Act, and prescribed the terms and conditions of service under that interconnection. Opportunity was afforded the parties to file briefs on exception to the Tentative Opinion and briefs were filed by both Georgia Power and Crisp County. Neither Georgia Power nor Crisp County in their briefs on exceptions have questioned the necessity of a permanent interconnection between the two systems. The exceptions to the Tentative Opinion have been directed to the Commission's determination of the appropriate terms and conditions for interconnected operation between Georgia Power and Crisp County and the apportionment of the cost of establishing the interconnection.

We are ordering the record reopened for further evidence with respect to certain issues relating to the terms and conditions of interconnected operation, but that need not delay the establishment of permanent interconnection facilities. On April 22, 1966 in Docket No. E-7288, 35 FPC 629, we ordered a temporary interconnection between the parties and by supplemental order issued December 5, 1966, 36 FPC 949, we ordered the capacity of the temporary interconnection to be increased. It is necessary and appropriate that the parties proceed to establish permanent interconnection facilities without delay. The terms and conditions of the interconnection and the proportion of the cost of the facilities to be borne by each party will be determined by further order of the Commission in this proceeding.

From February 23, 1967 to March 31, 1967, petitions were filed by 24 persons not parties to this proceeding seeking leave to file "data, views and arguments" with respect to the Commission's Tentative Opinion No. 508, issued

December 5, 1966[1]. In addition, the American Public Power Association and the City of Gainesville, Florida, neither of which is a party to the proceeding, filed oppositions to the petitions and asked, in the alternative, that if the petitions were granted, they too be permitted to file data, views and arguments in this matter. Crisp County and the staff of the Federal Power Commission filed answers opposing the petitions. Georgia Power Company filed an answer supporting the petitions.

Our consideration of these petitions and answers leads us to conclude that general industry-wide participation in this case is not appropriate. As we pointed out in Opinion No. 508 (mimeo. ed. p. 8):

> In adopting the rates, terms and conditions discussed herein, we do not suggest that these are the norm to be required by the Commission in every interconnection case under Section 202(b). We realize that appropriate rates, terms and conditions for any interconnection are dependent upon the nature and circumstances of the particular situation.

The further hearings which we now provide will facilitate a final resolution of issues directly affecting Crisp County, Georgia Power and possibly the latter's corporate affiliates. These parties are best able to develop the specific issues which will be decided in this case. Any application of the final decision in this docket to other utilities would depend upon facts to be developed on other evidentiary records. Clearly such questions are not properly a part of this case.

On April 3, 1967, Alabama Power Company, Gulf Power Company and Mississippi Power Company (joint petitioners) jointly filed motions and petitions seeking leave to intervene and to reopen the record. These petitioners are affiliates of respondent, Georgia Power Company, and are members, with Georgia Power, of the Southern Company Pool. Joint petitioners state that the new operating conditions imposed on Georgia Power by the Tentative Opinion will affect Georgia Power's contributions and commitments to the Pool and thus will have a direct effect on joint petitioners. As support for their motion to intervene out of time, joint petitioners state that it was not until after the issuance of Opinion No. 508 that they realized this case would have an impact on the Southern Pool.

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[1] The petitions were filed as follows:

| | |
|---|---|
| February 23, 1967 | Alabama Power Company |
| | Gulf Power Company |
| | Mississippi Power Company |
| March 3 and 31, 1967 | Southwestern Electric Power Company |
| March 6, 1967 | Appalachian Power Company |
| | Indiana & Michigan Electric Company |
| | Jersey Central Power & Light Company |
| | Kentucky Power Company |
| | Kingsport Power Company |
| | Metropolitan Edison Company |
| | New England Power Company |
| | New Jersey Power & Light Company |
| | Ohio Edison Company |
| | Ohio Power Company |
| | Pacific Gas and Electric Company |
| | Pennsylvania Electric Company |
| | Southern California Edison Company |
| | Virginia Electric & Power Company |
| | Wheeling Electric Company |
| March 7, 1967 | Arkansas Power & Light Company |
| | Louisiana Power & Light Company |
| | Mississippi Power & Light Company |
| | New Orleans Public Service, Inc. |
| March 7, 1967 | Gulf States Utilities Company |

We believe that these joint petitioners have shown good cause for granting permission to intervene out of time in this proceeding, for the limited purpose of showing the effects which the terms and conditions of the interconnection, as set forth in Opinion No. 508, may have upon their respective and combined interests as members of the Southern System Pool. In this connection it appears from questions raised in Crisp County's brief on exceptions and in joint petitioners' motions that it may be appropriate for us to give further consideration to the appropriate reserves for Crisp County to maintain under interconnected operation with Georgia Power.

Although the record in this case contains substantial evidence on Southern Pool operations, the operation of the Pool is complex and involved and it may be helpful to the Commission to have further evidence. As a part of the further hearings ordered herein, specific inquiry should be made into the Southern System Pool rate schedules[2] insofar as they would affect or be affected by the interconnection between Crisp County and Georgia Power. This further evidence may be helpful in considering costs and benefits to Georgia Power and Crisp County by reason of the interconnected operation contemplated in Opinion No. 508.

*The Commission further finds:*

(1) It is appropriate for purposes of the Federal Power Act, particularly Sections 201, 202, 205, 206, 307, 308 and 309 thereof, to reopen the record in this proceeding to receive additional evidence for the purposes as set forth in the recital above.

(2) Good cause has been shown to permit Alabama Power Company, Gulf Power Company and Mississippi Power Company to intervene out of time in this proceeding for the limited purpose of showing the effects which the terms and conditions of the proposed interconnection, as set forth in Opinion No. 508, may have upon their respective and combined interests as members of the Southern System Pool.

(3) Good cause has not been shown for granting the petitions for leave to file comments of Appalachian Power Company, *et al.*, Arkansas Power & Light Company, *et al.*, Gulf States Utilities Company, Southwestern Electric Power Company, the American Public Power Association, and the Gainesville Utilities Department and the City of Gainesville, Florida. In view of finding (2) above the petition of Alabama Power Company, *et al.*, need not be passed upon.

(4) The completion of the further hearings ordered herein, the provisions of Opinion No. 508 fixing the terms and conditions of the interconnection between Crisp County and Georgia Power shall be subject to further order of the Commission. However, in order that the reopening of the record not delay physical construction of the interconnection facilities, it is necessary and appropriate that these parties advise the Commission of their plan of construction of the 110 kv interconnection facilities described in finding (4) of Opinion No. 508 within 20 days hereafter. It is necessary and appropriate that Georgia Power and Crisp County physically commence construction of the interconnection within 60 days hereafter and complete it expeditiously, absent a showing of good cause why this cannot be done.

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[2] Southern Services, Inc. Rate Schedule FPC No. 34, Alabama Power Company Rate Schedule FPC No. 96, Georgia Power Company Rate Schedule FPC No. 712, Gulf Power Company Rate Schedule FPC No. 39, Mississippi Power Company Rate Schedule FPC No. 87.

*The Commission orders:*

(A) The record in this proceeding is hereby reopened and remanded to a hearing examiner of the Commission with the direction that he receive further evidence on the matters as referred to in finding (1) above. The public hearing for this purpose shall be held at the Commission's hearing room, 441 G Street, N.W., Washington, D.C., at a time to be fixed by the Examiner.

(B) Alabama Power Company, Gulf Power Company and Mississippi Power Company are hereby granted leave to intervene in the above entitled matter subject to the rules and regulations of the Commission: *Provided, however*, that the participation of such interveners shall be limited to the matters specifically set forth in finding (2) above; and *Provided further*, that the admission of such interveners shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered in this proceeding.

(C) The petitions for leave to file comments by the persons referred to in finding (3) above are hereby denied.

(D) The members of the Southern System, namely interveners Alabama Power Company, Gulf Power Company and Mississippi Power Company, and respondent Georgia Power Company, shall file with the Commission their proposed direct evidence in writing on or before July 24, 1967. Such direct cases shall include evidence showing how the Southern System companies would propose to operate their respective systems or modify their Pool rate schedules, if at all, if the terms and conditions set forth in Opinion No. 508 should be put into effect, and how those terms or conditions should be changed, if at all, so as to give recognition to any minimum reserves or other operating conditions which the Southern System companies believe should be observed by Crisp County under interconnected operation. All submittals shall be in the form and style as set forth in the Commission's Rules of Practice and Procedure. A pre-hearing conference shall be convened in a hearing room of the Commission at 10:00 a.m. (EDT) on July 27, 1967 for the purpose of setting dates (1) for filing rebuttal evidence, which may include proposals for changes in the Southern System Pool rate schedules mentioned in the recital above, and (2) reconvening the hearing for purposes of cross-examination. Any further testimony shall be as directed by the hearing examiner. The hearing examiner is directed to complete the hearing without undue delay.

(E) Within 20 days from the date of this order Georgia Power and Crisp County shall advise the Commission of their plan of construction of the 110 kv interconnection facilities described in finding (4) of Opinion No. 508.

(F) Within 60 days from the date of this order Georgia Power and Crisp County shall physically commence construction of the interconnection facilities referred to in Paragraph (E) above and complete that construction expeditiously.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## WILLIAM HARVEY DENMAN, TRUSTEE, ET AL. v. J. M. HUBER CORPORATION, DOCKET NO. RI67-113; MOBIL OIL CORPORATION v. CARL F. MATZEN, ET AL., DOCKET NO. RI67-114; WESTERN NATURAL GAS COMPANY v. ELMER HENNIGH, ET AL., DOCKET NO. RI67-310; PAN AMERICAN PETROLEUM CORPORATION v. LELAND C. WAECHTER, ET AL., DOCKET NO. RI67-400

### ORDER MODIFYING RULING AND GRANTING MOTIONS FOR CLARIFICATION OF ORDER, AMENDMENT OF ANSWER, AND CONSOLIDATION

(Issued June 23, 1967)

The proceeding in Docket No. RI67-113 was begun by a petition for a declatory order filed by William Harvey Denman, Trustee, *et al.* (Denman) following the decision of the Fifth Circuit Court of Appeals in *J. M. Huber Corporation* v. *Denman*, 367 F. 2d 104 (1966). J. M. Huber Corporation (Huber) filed an answer and a cross-complaint to Denman's petition and Denman filed an answer thereto. The proceedings in Docket No. RI67-114 and Docket No. RI67-310 were instituted by complaints filed by Mobil Oil Corporation (Mobil) and Western Natural Gas Company (Western), to which answers were filed by the lessor defendants named in each proceeding. Mobil and Western submitted replies to these answers.

By order issued April 3, 1967, 37 FPC 707, the Commission consolidated these proceedings for hearing. The common question presented is whether royalty payments made to the lessors named in these proceedings are subject to this Commission's jurisdiction under the Natural Gas Act. By order issued May 8, 1967, the Commission permitted intervention or the filing of amici briefs as requested by various lessor interests, producers, distributors and pipeline companies, including The Land and Royalty Owners of Louisana (LAROLA).

*The Ruling on Admission of Evidence*

The Presiding Examiner in prehearing conference ruled that "* * * under the Commission's order issued April 3, 1967 * * * the evidence to be received must relate and be confined to the issues set forth in the hearing order as it relates to the royalty interests named in the petitions and complaints named in the above dockets, *i.e.*, that this proceeding is not a general investigation of all other royalty interests." The Examiner was asked to explain his ruling. The following dialogue took place:

> MR. POLAND: Mr. Examiner, in connection with your ruling, I had understood you to say that you would not permit the presentation of evidence such as was perhaps suggested by Mr. McGrath as evidence pertaining to specific circumstances surrounding the effect of jurisdiction over royalty owners in Louisiana.
>
> On the other hand, I did not understand your Examiner's ruling to be so broad as to rule out the presentation of general industry evidence as to the impact of an order asserting jurisdiction over royalty owners. In other words, for example, if groups here should show industry practice and how that might effect the Commission's ruling in these cases or the impact of assertions of jurisdiction over royalty payments, as to how that

might affect these particular cases, I do not understand your ruling to rule out that type of evidence.

Am I correct?

PRESIDING EXAMINER: It does. It rules out that type of evidence. (Tr. 121.)

From this ruling, LAROLA, Humble Oil & Refining Company (Humble) and the State of Texas have appealed.

The Examiner was correct in excluding evidence as to particular royalty agreements and particular circumstances other than those involving the royalty interests party to these proceedings. We think, however, that evidence relating to the general industry contracting practices with respect to gas leases should be admitted so that the Commission may be fully informed as to the general background of the problem and possible economic and legal consequences before making its determination. As specific items of evidence are presented the Examiner should rule upon the admissibility in accordance with the views here expressed.

The Examiner was quite correct in stating that this proceeding is not a general investigation of royalty interests other than those involved in these proceedings, and nothing in this order or in any other order issued heretofore in this proceeding should be construed to the contrary.

*The Huber Motions*

Two motions have been made by Huber. On May 5, 1967, Huber moved to clarify the Commission order of April 3, 1967, to make it clear that Huber's complaint in Docket No. RI67-113 is consolidated in this proceeding. This was the intent of the April 3 order and, to the extent any such clarification is necessary, Huber's motion is granted. Huber further moved to amend its complaint by interlineation to correct inadvertent omission. Specifically, Huber wishes to insert "V" between "IV" and "VI" on page 8 of its answer to the complaint in Docket No. RI67-113. There being no objection, Huber's motion is granted.

*The Pan American Motion to Consolidate*

On May 11, 1967, Pan American Petroleum Corporation (Pan American) filed its complaint against Leland C. Waechter, *et al.*, requesting the Commission to institute a hearing to determine whether it has regulatory jurisdiction over rates at which royalty payments are to be made under Pan American Gas Rate Schedule No. 84. On the same day, Pan American moved to consolidate its proceeding with the other dockets that are the subject of this order. It appears that the same issues are presented in all these proceedings, and that no undue delay will result from granting Pan American's motion, to which there has been no opposition. Accordingly, the motion is granted. In view of the likelihood that consolidation of additional proceedings that may be instituted may delay decision in the present dockets, the Commission does not anticipate that motions for consolidation of such additional proceedings will be granted.

*The Commission orders:*

(A) The rulings of the Presiding Examiner with respect to admission of evidence to be presented in this proceeding shall be made in accordance with the foregoing.

(B) The motion of J. M. Huber Corporation for clarification of the order of April 3, 1967, in this proceeding, and its motion to amend its answer and complaint in Docket No. RI67-113, are granted.

(C) The motion of Pan American Petroleum Corporation to consolidate Docket No. RI67–400 for hearing with the other dockets that are the subject of this order is granted.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP67–321

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 23, 1967)

On May 1, 1967, Florida Gas Transmission Company (Applicant) filed in Docket No. CP67–321 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the twelve-month period commencing July 1, 1967, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers or other similar sellers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of facilities covered by this application will not exceed a maximum of $1,000,000, with no single project to exceed a cost of $250,000, which costs will be financed from internally generated funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At the hearing held on June 15, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G–9262 and G–9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

**(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.**

**(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.**

**(6) Public convenience and necessity required that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.**

**(7) The authorization hereinafter granted should be limited to construction during the twelve-month period commencing July 1, 1967 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.**

***The Commission orders:***

**(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Florida Gas Transmission Company, to construct during the twelve-month period commencing July 1, 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding and to operate such facilities only to take natural gas supplies from producers or other similar sellers who have received authorization from the Commission to sell natural gas to said Applicant.**

**(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.**

**(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.**

**(D) The authorization granted in paragraph (A) above is limited to construction during the twelve-month period commencing July 1, 1967, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.**

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-289

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

**(Issued June 23, 1967)**

**On April 6, 1967, Southern Natural Gas Company (Applicant) filed in Docket No. CP67-289 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the transportation and delivery, on a firm and interruptible basis, to MacMillan Bloedel United Inc.**

(MacMillan) for use by the latter as fuel in its new wood products plant located near Pine Hill, Wilcox County, Alabama, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate a line tap and a metering and regulating station on its main South Line in Perry County, Alabama, and a metering station at MacMillan's plants near Pine Hill. Applicant will deliver gas to the Wilcox Gas District (Wilcox) for the account of MacMillan from the main South Line and Wilcox will transport said gas to MacMillan's proposed plants.*

Applicant proposes to deliver a total of 28,600 Mcf of gas per day to MacMillan, of which volume 550 Mcf per day will be a firm delivery and the balance an interruptible delivery.

Applicant and MacMillan have entered into a contract, dated February 10, 1967, providing for the proposed sale of natural gas. Said contract provides further for the sale of interruptible and firm volumes at rates subject to certain adjustments as set forth in said contract, of 24 cents per Mcf and 34 cents per Mcf, respectively.

The total estimated cost of Applicant's proposed facilities is $87,030, which cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 22, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of the subject facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

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*In Docket No. CP67-274, Wilcox has filed an application for an order under Section 7(a) of the Natural Gas Act directing Southern to establish physical connection of its transmission facilities with the facilities proposed by Wilcox and to sell and deliver natural gas for resale and distribution. The order in Docket No. CP67-274 is being issued concurrently with the subject order, *infra*, p. 1115.

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) The deliveries of natural gas hereinafter ordered should be limited to a total volume of 28,600 Mcf per day (14.73 psia), with the firm portion of that amount being limited to 550 Mcf per day and with the remaining portion being interruptible deliveries.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and proposed transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) The deliveries of natural gas authorized in paragraph (A) above shall be limited to a total volume of 28,600 Mcf per day (14.73 psia), with the firm portion of that amount being limited to 550 Mcf per day and with the remaining portion being interruptible deliveries.

(E) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP67-173

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 23, 1967)

On December 16, 1966, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP67-173 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing additional natural gas service totaling 4,415 Mcf per day for twelve of Applicant's existing resale customers, all as more fully set forth in the application in this proceeding.

**Specifically, Applicant proposes to make the following additional sales:**

| Customer | Rate Schedule | Mcf per day at 14.6 psia |
|---|---|---|
| Greenwood, South Carolina, City of | CD-2 | 500 |
| North Carolina Gas Service Division of Pennsylvania and Southern Gas Company. | CD-2 | 700 |
| United Cities Gas Company Georgia Division | CD-1 | 1,150 |
| Greer, South Carolina, City of | G-2 | 300 |
| United Cities Gas Company South Carolina Division | OG-2 | 450 |
| Clanton, Alabama, City of | G-1 | 190 |
| Commerce, Georgia, City of | G-1 | 450 |
| Covington, Georgia, City of | G-1 | 130 |
| Lawrenceville, Georgia, City of | G-1 | 170 |
| Madison, Georgia, City of | G-1 | 115 |
| Monroe, Georgia, City of | G-1 | 130 |
| Social Circle, Georgia, City of | G-1 | 130 |
| Total | | 4,415 |

**Applicant proposes no new facilities in the subject application. On January 20, 1967, Applicant was granted a temporary certificate authorizing the proposed additional sales.**

**After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.**

**At a hearing held on June 15, 1967 the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,**

***The Commission finds:***

**(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 145).**

**(2) The proposed transportation and sales of natural gas hereinbefore described, as more fully described in the application in this proceeding, are to be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.**

**(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.**

**(4) The proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.**

**(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.**

***The Commission orders:***

**(A) A certificate of public convenience and necessity is issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.**

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP67-292

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 23, 1967)

On April 10, 1967, Transwestern Pipeline Company (Applicant) filed in Docket No. CP67-292 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Southern Union Gas Company (Southern) together with the construction and operation of minor taps and valves incident thereto, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to sell up to 25,000 Mcf of natural gas per year to Southern for resale to its right-of-way farm customers, in Loving, Winkler, Ward, Reeves and Crane Counties, Texas, for domestic and irrigational use and to install and operate the necessary incident minor facilities.

Applicant will make the proposed sale to Southern under its presently effective Rate Schedule RW-1 at a flat rate of 26.5 cents per Mcf. Rate Schedule RW-1, available for right-of-way customers, covers the sale of interruptible gas for irrigational and farm use and firm gas for residential use.

Applicant states that the total cost of any facilities incident to such sales will be reimbursed to Applicant by Southern.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 15, 1967, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 10, 1963 in Docket No. CP63-290 (30 FPC 997).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed installation and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) Upon the terms and conditions of this order a certificate of public convenience and necessity is issued to Applicant authorizing the installation during the twelve-month period commencing with the date of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate the facilities for the delivery and sale of up to 25,000 Mcf of natural gas annually to Southern Union Gas Company pursuant to Applicant's FPC Gas Rate Schedule RW-1.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 and (c)(8) of Section 157.7 of such Regulations.

(C) The certificate is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Transwestern for firm service to its customers.

(D) Applicant shall execute and file with the Commission, in accordance with the Commission's Regulations, an appropriate service agreement covering the authorized service.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## THE WILCOX COUNTY GAS DISTRICT AND SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-274

### FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued June 23, 1967)

On March 23, 1967, The Wilcox Gas District (Applicant) filed in Docket No. CP67-274, as supplemented on May 1, 1967, an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Respondent) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell and deliver natural gas to Applicant for resale and distribution in the communities of Pine Hill and Camden, and environs, Wilcox County, Alabama, all as more fully set forth in the application.

In addition, Applicant also proposes to transport natural gas purchased by MacMillan Bloedel United, Inc. (MacMillan) from Respondent. Applicant will receive said gas from Respondent's main South Line in Perry County, Alabama, and will transport said gas by means of proposed facilities and deliver same to MacMillan's proposed new plants near Pine Hill.*

Specifically, Applicant proposes to construct and operate approximately 43.28 miles of 8-inch transmission line and two 3-inch lateral lines totaling approximately 22.77 miles, as well as the distribution facilities necessary for service to the two communities and their environs.

The total estimated third year peak day and annual natural gas requirements for the two communities is 665 Mcf and 51,913 Mcf respectively.

The total estimated cost of the proposed project is $1,650,000, which cost will be financed by the issuance of revenue bonds.

On April 10, 1967, Respondent filed an answer to the subject application stating no objection to the issuance of the requested order.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on April 8, 1967 (32 F.R. 5750). No protest or petition to intervene has been filed in this proceeding.

*The Commission finds:*

(1) Respondent, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) Applicant, The Wilcox County Gas District, is a public corporation existing and organized under the laws of the State of Alabama and is legally empowered to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell natural gas to Applicant under a service agreement to be executed by Applicant and Respondent, in accordance with the Commission's Regulations, and to deliver up to 665 Mcf of natural gas per day for distribution and resale as hereinbefore described.

(4) The requirement that Respondent serve Applicant as hereinafter ordered will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent within one year from the date of issuance of this order.

*The Commission orders:*

(A) Respondent is directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell up to 665 Mcf of natural gas daily to Applicant and to deliver said gas under a service agreement to be executed by Applicant with Respondent, in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate FPC Gas Rate Schedule, and, further, in accordance with the Commission's Regulations, Respondent shall file with the Commission the executed service agreement to be entered into between Respondent and Applicant.

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*In Docket No. CP67-289, Southern has filed an application for a certificate authorizing natural gas service for MacMillan. The order in Docket No. CP67-289 is being issued concurrently with the subject order, *supra*, p. 1110.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## BANGOR HYDRO-ELECTRIC COMPANY, DOCKET NO. E-7316

### ORDER AMENDING ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued June 26, 1967)

By order issued December 22, 1966, 36 FPC 1095, in the above docket, Bangor Hydro-Electric Company (Bangor) was authorized to acquire all of the electric facilities of Hampden and Newburg Light and Power Company (Hampden).

Pursuant to an agreement between the parties Bangor was to transfer 4,393 shares of its Common Stock in exchange for Hampden's outstanding Preferred and Common Stock, Bangor acquired the 4,393 shares on the over-the-counter market for a total cost of $90,057. This cost compared with Hampden's net assets of $73,533 as of December 31, 1965 would have created an acquisition adjustment of $16,524 which Bangor proposed to eliminate by a Debit to Earned Surplus.

The agreement was contingent upon receipt of a ruling from Internal Revenue Service to the effect that Hampden's stockholders would not be subject to taxes on the exchange of stock. To date, the Internal Revenue Service has refused to issue a favorable ruling. As a result, Bangor and Hampden on May 19, 1967, entered into a new agreement to the effect that in the event that the Internal Revenue Service determines the transaction to be taxable and such a determination is ultimately upheld, Bangor will transfer 440 additional shares of its Common Stock to the stockholders of Hampden in accordance with the agreement, to compensate the stockholders for the taxes paid.

If it becomes necessary for Bangor to issue 440 additional shares of its Common Stock, the acquisition cost of Hampden's net assets will be increased by Bangor's cost of the acquisition of its stock. The current acquisition cost of the additional shares would be about $8,800. Bangor proposes to eliminate any additional acquisition adjustment created by the transfer of the additional shares by a Debit to Earned Surplus.

By amendments to its original application filed May 22 and 25, 1967, Bangor requests that the Commission issue a supplemental order permitting the transfer of 440 additional shares of its Common Stock in the event that the Internal Revenue Service finds the transaction to be subject to taxes and such a finding is ultimately upheld.

*The Commission finds:*

The proposed transfer by Bangor of 440 additional shares of its Common Stock to the stockholders of Hampden in the event that the Internal Revenue Service finds the transaction taxable on behalf of the stockholders of Hampden is reasonable and will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

*The Commission orders:*

(A) The Commission's order issued December 22, 1966, is hereby amended to the extent that in the event the Internal Revenue Service determines the transaction to be taxable on behalf of the stockholders of Hampden that Bangor is authorized to transfer 440 additional shares of its Common Stock to the stockholders of Hampden all as set forth in the amendments to its application referred to above subject to the provisions of this order.

(B) In the event that Bangor transfers the additional shares of its Common Stock as provided in (A) above, Bangor shall notify the Commission within 30 days thereof and submit journal entries showing the disposition of the additional acquisition adjustment thereby created by a Debit to Earned Surplus.

(C) All other terms and conditions of the Commission's order issued December 22, 1966, shall remain in full force and effect.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CONSUMERS POWER COMPANY, DOCKET NO. E-7352

### ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued June 26, 1967)

Consumers Power Company (Applicant), filed an application on May 15, 1967, with the Federal Power Commission pursuant to Section 204 of the Federal Power Act seeking authority to issue and sell at competitive bidding First Mortgage Bonds in the aggregate principal amount of $80,000,000. Applicant is incorporated under the laws of the State of Maine and is qualified to do business in Michigan with its principal place of business at Jackson, Michigan, and is engaged in the generation, purchase, distribution and sale of electricity in 1,522 communities and townships including rural areas, and in the purchase, distribution and sale of natural gas in 658 communities and townships all in the State of Michigan.

The New Bonds which Applicant proposes to issue on or about July 27, 1967 will mature on July 1, 1997. The New Bonds will constitute an additional series of First Mortgage Bonds to be issued under the Applicant's indenture dated as of September 1, 1945, and to be supplemented by all indentures supplemental thereto, including a fourteenth supplemental to be dated as of July 1, 1967. The company proposes to sell the New Bonds at competitive bidding in accordance with the applicable requirements of the Commission's Regulations under the Federal Power Act. The interest rate of the Bonds will be determined by the successful bidder in the bids submitted by such bidder upon competitive bidding.

The Applicant intends on or about July 12, 1967 to invite sealed, written proposals for the purchase from it of the $80,000,000 new Bonds. The Public Invitation for Proposals contains the following provisions:

> Each proposal must be for the purchase of all the Bonds and may be made by a single bidder or by a group of bidders. No bidder may submit or participate in more than one proposal. Each proposal must be presented to the Applicant at the office of Messrs. Winthrop, Stimson, Putnam & Roberts, 40 Wall Street, New York, N.Y., on July 19, 1967, before 11:00 a.m., EDST, and be accompanied by a deposit $1,600,000.

> Each proposal shall specify the rate of interest to be borne by the Bonds, which rate shall be a multiple of ⅛ of 1%; and shall also specify the price (exclusive of accrued interest) to be paid to the Applicant, which price shall not be less than 100% nor more than 102¾% of the principal amount. Each proposal shall provide that the purchaser or purchasers of the Bonds shall pay to the Applicant accrued interest on the Bonds from July 1, 1967, to the date of payment therefor and delivery thereof.
>
> Unless the Applicant shall reject all proposals or exclude a proposal or proposals for reasons set forth in the Public Invitation for Proposals, it will accept the proposal which provides for the lowest cost of money.

As a condition to this Bond issue, Applicant proposes to include a provision that the Applicant may not call the issue for the purposes of refunding with money borrowed at a lower cost for a period of five years (usually referred to as a "no-call provision"). Applicant is aware of the Commission's long-standing policy of requiring full callability in long term debt issues. However, Applicant maintains that the inclusion of a five-year no-call provision would result in substantial interest savings to the Applicant. In support of its position, Applicant has submitted several studies.

We have reviewed the studies and memoranda submitted by the Applicant in favor of the "no-call" provision and we are well aware of the arguments for and against the inclusion of such provision. The question is a close one, and we recognize that there is merit in the arguments on both sides.

We recognize that the market establishes the yield of debt securities based on many factors including the terms under which such securities are callable. In market circumstances where lenders favor call protection, securities requiring full callability may not attract the attention of a wide enough segment of the investment community so as to obtain the best exposure and most favorable price. Because of the careful attention paid by the issuers to the market in determining the most advantageous position on callability, we believe that the decision in general should be left to management's discretion as to whether or not a five-year no-call provision should be utilized. We note that the Tennessee Valley Authority, a Federal Agency, has gone to the long-term capital market four times since 1960 and each bond issue has had five-year call protection.

In recognition of this belief, we are, therefore, changing our policy and henceforth as a general rule we will not object to the inclusion by Applicants before us, of a provision in a Bond issue whereby the Applicant agrees not to call the issue for the purposes of refunding with money borrowed at a lower cost for a period not to exceed five years from the date of issuance. Thus, in this case, we have no objection to the Applicant's use of the five-year no-call provision in the proposed Bond issue as requested.

According to the Application the net proceeds from the sale of the New Bonds will be used first, to discharge short-term bank loans incurred and to be incurred prior to the sale of the New Bonds to secure funds for construction purposes (which, at April 30, 1967, amounted to $28,000,000) and second, to provide a portion of the funds required for the construction or acquisition of permanent improvements, extensions and additions to the Company's property.

Present plans call for the expenditure by the Company of approximately $135,176,000 in 1967 for the construction or acquisition of property additions. The 1967 expenditures include an estimated $21,432,000 on generating stations, including (1) an estimated $2,608,100 on the second unit of 385,000 kw rated capacity of the James H. Campbell Plant, located 10 miles north of Holland, Michigan, (2) an estimated $14,300,000 on the proposed Palisades Generating Plant, to be located 5 miles south of South Haven, Michigan, (3) an estimated $2,797,000 to provide facilities for receiving, unloading and storing coal delivered by Unit Trains at the D. E. Karn and J. C. Weadock Plants, located 2.5 miles northeast of Bay City, Michigan, (4) an estimated $50,000 on three proposed Peaking Units of 20,000 kw each, to be located at the J. R. Whiting Plant located 9 miles southwest of Monroe, Michigan, J. C. Weadock Plant, located 2.5 miles northeast of Bay City, Michigan, and the Gaylord Generating Plant, located 1 mile west of Gaylord, Michigan, (5) an estimated $800,000 to install electrostatic precipitators on all five units at the B. C. Cobb Plant, located adjacent to the north city limits of Muskegon, Michigan, and (6) $876,900 for miscellaneous generation; $27,923,200 for electric transmission line and substation additions; $30,635,900 for electric distribution line and substation additions; $42,429,000 for gas properties; and $12,755,900 for general and miscellaneous.

It is anticipated that the sources of additional funds required for the Company's 1967 construction program will be depreciation accruals, cash on hand, retained earnings and/or short-term bank loans. No additional permanent financing is presently contemplated for 1967.

Written notice of the application has been given to the Michigan Public Service Commission and the Governor of that State. Notice has also been published in the Federal Register on June 2, 1967 (32 F.R. 7988), stating that any person desiring to be heard or to make any protest with reference to the application shall file petitions or protests on or before June 6, 1967 with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) The Applicant owns and operates facilities which may be facilities for the transmission of electric energy in interstate commerce and it may be a public utility within the meaning of that term as used in Section 204 of the Federal Power Act.

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the meaning of the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

*The Commission orders:*

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by the Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Chairman White *concurring.*

Commissioner Ross *dissenting.*

WHITE, *Chairman, concurring:*

I concur with the majority's decision in this proceeding, including its determination that a five year no-call provision may be included. The issue is a close one and where, as here, there is little evidence available to us that a five year no-call provision would be contrary to the public interest, yielding to management's judgment strikes me as a most reasonable disposition of the matter. I am concerned, however, with the majority's statement that its position here constitutes a flat reversal of the Commission's long-standing policy of requiring full callability. It is significant to me that the Securities and Exchange Commission which has far broader authority in the area of security issuances than the FPC has not seen fit to alter its policy of requiring full callability and there is no evidence that it is considering such a policy change. Thus the majority's decision to make a complete reversal of the Commission's policy on callability puts us in opposition to the firm position of a sister agency without what I consider to be sufficiently broad study of the entire matter.

In the proceeding before us at this time we are confronted with only one security issuance and do not have evidence of the long-term impact which a policy change might have on the industry and investment community in general nor have we had a comprehensive study of the experience under our existing policy. Therefore, I would limit our determination here to circumstances of this situation and I am not prepared to subscribe to any long-range reversal of the Commission's present policy on callability. I would hope that this experiment with permitting a five year no-call provision will be of some guidance in making future determinations.

ROSS, *Commissioner, dissenting:*

Previously, the Commission had decided that the guiding principle in settling differences of opinions as to the desirability of refund provisions in bond issuances should be determined in favor of full callability. Its rationale was stated in the *Puget Sound Power & Light* case as follows[1]:

> * * * we believe it to be in the public interest, in the case of a regulated industry such as the electric utility industry, that this "hire" be stated, in such a manner as to allow the debtor to take advantage of any future fortuitous market conditions which might result in lower annual costs of money to it.

Ordinarily, call provisions enable the issuer to call bonds at any time for the purpose of refunding them at lower rates. Using a typical bond issue, the interest rate must decline approximately .65 of a percentage point to make refunding a desirable course of action.[2] The range of average bond yields over the past ten years indicates that the fluctuations in interest rates were probably considerable enough to warrant refunding in many instances.[3]

The desire for a no-call provision on the buyer's part is particularly strong when high interest rates prevail in the long-term money market. Because the buyer is of the opinion that interest rates will become lower within a five-year period, he feels it worth something to preclude refunding of the bond issuance beyond the normal disincentive provided in the typical re-call formula. The issuer, on the other hand, must balance the lower costs resulting from the buyer's desire for an assured return, against the possibility of savings from refunding the issue within the five-year period if interest rates fall. Thus, the more convinced the buyer is that interest rates will fall, the more vigorously he will insist on a no-call provision. On the other hand, the more inclined the issuer is to yield, the more he is of the opinion that interest rates will remain high over the five-year period.

To persuade the Commission to reverse its policy, Consumers Power had to present data supporting two logically inconsistent positions; (1) that interest

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[1] *Puget Sound Power & Light Co.*, 17 FPC 840 (1957).

[2] *Assumptions:*

Interest rate on callable bond is 6¼%.
Interest rate on non-callable bond is 6%.
Term of the bonds is 30 years.
Bonds are sold at par.
Only refinancing cost is the duplicate interest cost.
The call premium equals the coupon rate of interest prorated for the remaining life of the callable bond.

| *Conclusions:* If bond is to be refunded after: | *Interest rate must decline by more than:* |
|---|---|
| 1 year | 0.646 |
| 2 years | .645 |
| 3 years | .643 |
| 5 years | .644 |

[3] *Average bond yields on Public Utility Bonds (in percentage)* (Sources: Moody's Public Utility News, June 6, 1967, Moody's Public Utility Manual, August, 1966).

| | "A" | "Aa" |
|---|---|---|
| | *High Low* | *High Low* |
| 1967 [a] | 5.79–5.24 | 5.60–5.02 |
| 1966 | 5.85–4.85 | 5.74–4.78 |
| 1965 | 4.83–4.49 | 4.43–4.75 |
| 1964 | 4.55–4.49 | 4.40–4.46 |
| 1963 | 4.46–4.37 | 4.27–4.39 |
| 1962 | 4.66–4.44 | 4.31–4.52 |
| 1961 | 4.73–4.48 | 4.58–4.29 |
| 1960 | 5.02–4.57 | 4.76–4.36 |
| 1959 | 5.03–4.47 | 4.79–4.27 |
| 1958 | 4.56–3.93 | 4.29–3.68 |
| 1957 | 4.62–3.96 | 4.32–3.80 |

[a] Through week of June 2, 1967.

rates would remain high and therefore, management would never have opportunities to gain savings from refunding and (2) that despite the inevitable, clear prospect of (1), the investors would be willing to pay a significant extra amount for a no-call provision because of their belief that Consumers Power would refund.

Thus, to support its position that interest rates would remain high and therefore, the no-call provision could not work to its detriment, Consumers Power presented as exhibits a set of papers by Professor Gies, Professor of Finance at the University of Michigan, and Professor McCracken, Professor of Business Administration at the University of Michigan. The essence of both papers was that investors could look to high interest rates in the future. In the words of Professor Gies, the demands upon our economy would "push capital returns and the yield on corporate securities to *new higher ground* in the decade of the 70's."[4] [emphasis added] Professor McCracken likewise found that "the basic environment * * * must be expected to be one of fairly firm interest rates."[5] Yet, the result of these predictions is nothing less than a refutation of the desirability of a no-call provision on the investor' part, for, to quote Professor Gies, "If the investor is confident that interest rates will rise or at least not drop before the call privilege becomes effective, then for him the delayed call provision is worthless."[6] What the professors are saying is that the other evidence presented by Consumers Power representing opinions from financial institutions like the First National City Bank of New York to the effect that no-call provisions could be worth up to 20 basis points to a borrower indicates that the investment community is willing to buy a worthless item, *i.e.*, a no-call provision. The statements from the investment houses, which harbor their own sets of financial experts, indicate a down-turn in interest rates that would make a no-call provision worth the extra basis points mentioned in their letters. In view of this difference of opinion from two such reputable sources, presented by the applicant's own exhibits, I am unable to conclude, as the majority must, that the public interest would be better served by the inclusion of a no-call provision which assumes that interest rates in the future will remain high or climb higher. Moreover, I am surprised that my fellow Commissioners would subscribe to such an assumption!

Without quarreling with the theories presented by Professors Gies and McCracken, I note also that there is also a school of thought mentioned by Professor Gies as the "apparently prevailing view" that a growing economy with full employment as a national goal will seek to hold off any substantial increase in interest rates since it will restrict business expansion. That view would indicate that there is a likely probability that interest rates will go down.

From the spare language of the majority opinion, it seems that the majority has chosen to reverse a long-standing policy on the grounds that "the decision (on callability), in general, should be left to management's discretion * * *" They thus choose to ignore the realities of financing for public utilities. The largest block of potential buyers of public utility bonds are the insurance companies, trust, pension and endowment funds who prefer low risks.[7] The accumulation of large amounts of capital by these groups and their influence upon the market was noted by Chairman Martin of the Federal Reserve Board in the following excerpt from a recent speech:

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[4] Gies, p. 15. Exhibit B of Consumers Power application.

[5] McCracken, p. 7. Exhibit A of Consumers Power application.

[6] Gies, *op. cit.*, p. 2.

[7] At the end of 1965, the United States life insurance companies alone "held $17.0 billion or about two-fifths of the long-term financing of all privately owned utilities." *Life Insurance Fact Book*, 1966, p. 76.

> Changes have been particularly evident in the market most directly concerned with financing long-term business investment—that for corporate bonds. Certainly this is no longer a retail market in the customary sense of the word. The principal suppliers of funds are now insurance companies, corporate pension funds and, more recently, the retirement systems operated on behalf of the state and local government employees * * *
>
> Underwriting practices also reflect the character of the market's dominant customers. In a retail market where large bond issues must be distributed to a great number of individuals or small institutions, underwriting syndicates must make a massive sales effort to market bonds in small denominations. But where large institutional investors are the principal takers, potential customers are readily canvassed and are likely to subscribe for large blocks.[8]

There are indications that the managements of public utilities are not altogether immune from the preferences of groups like the trust funds. Put bluntly, the fact is that management may sympathize in public with the preference for no-call provisions but privately is relieved that agencies like the Federal Power Commission and the Securities and Exchange Commission have precluded no-call provisions. As a result, the managements have been free to exercise the callability provision whenever market conditions proved favorable after the issuance of the bonds.

During periods of "tight" money when there is intense competition for the relatively scarce supply of money, it is easy to see how management would be prone to adopt any and all conditions set forth by the money market. To the extent that the Commission serves as a buffer to assure managers of public utilities the right to take advantage of changes in a more favorable money market for the further benefit of their consumers and stockholders, it is merely serving one of its many regulatory functions.

One other issue remains to be discussed, that of the effect of the majority's decision on the generally compatible policies between the SEC and the FPC in their regulation of financing for the electric utilities industry. As a rule, it seems good policy to me to coordinate major changes in policy where two federal agencies have jurisdiction over different companies in the same industry. There are 24 electric companies over which the Federal Power Commission has direct jurisdiction of bond issuances; the SEC has jurisdiction over approximately 18 active systems of which there are 88 electric and/or gas utility subsidies.[9] In its 1966 Report, the SEC stated that it "has continued to require that bonds and preferred stock sold by registered holding companies and their subsidiaries be refundable at the option of the issuer upon reasonable notice and that any redemption premium be reasonable in amount."[10] The SEC noted that its "continuing studies * * * with respect to electric and gas utility bond issues sold at competitive bidding, whether or not subject to the Act, indicated that the presence or absence of a restriction on free refundability has not affected the number of bids received by an issuer at competitive bidding." In view of the SEC's policy and studies, it appears most appropriate to solicit the views of the SEC so that a difference in regulatory policies will not lead to further confusion for investors.

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[8] Remarks of William McC. Martin, Jr. delivered on May 16, 1967, in observance of 175th anniversary of New York Stock Exchange.

[9] 1966 SEC Annual Report, p. 77.

[10] *Id.*, at p. 82.

I think this issue is one that cuts to the essence of the regulatory function. It serves to illustrate Professor Lewis' remarks that "regulation is not easy, either for the regulated or for those who regulate. Inevitably, it must always contemplate, and frequently must require, the subordination of management judgments to the judgment of the agency charged by the public with the regulatory task. This is its very nature."[11] In my opinion, this is just such an instance. Until more substantive reasons are presented for changing a hitherto valid Commission policy, I dissent to the majority's decision with regard to the call provision.

In all other respects, I concur with the majority's decision regarding the issuance of the bonds.

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[11] Lewis, "Emphasis and Misemphasis in Regulatory Policy," *Utility Regulation*, ed. by William Shepherd and Thomas G. Gies, at p. 221.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## MINOR PROJECT LICENSE APPLICATIONS—EXHIBIT RELATING TO FISH AND WILDLIFE RESOURCES, DOCKET NO. R-306

## ORDER NO. 350

### PRESCRIBING A NEW EXHIBIT S TO § 131.6

(Issued June 26, 1967)*

On August 1, 1966, the Commission issued a notice of proposed rulemaking in this proceeding (31 F.R. 10582, August 6, 1966) wherein it proposed to amend Part 131 of the Commission's regulations to require the submission of an Exhibit S, relating to the conservation of fish and wildlife resources, with an application for license for proposed minor projects, *i.e.*, unconstructed projects having 2,000 horsepower or less of installed capacity.

The submissions of Exhibit S will expedite the processing of such applications by identifying potential problems with respect to fish and wildlife resources and suggesting possible solutions thereto earlier in the course of the proceeding than is now possible under existing procedures. It will also facilitate the Commission's compliance with the requirements of the Fish and Wildlife Coordination Act, as amended (16 U.S.C. § 666), for consultation with the U.S. Fish and Wildlife Service, Department of the Interior and appropriate state fish and wildlife agencies on the conservation of fish and wildlife resources affected by a project.

We received nine responses to the notice,[1] six of which expressed unqualified support of the proposed rule. The California Department of Fish and Game in commenting upon the instant rulemaking proposal, while strongly endorsing the proposed rule, recommends that it be made applicable to applications for new licenses for minor projects. We understand the Department's comments to mean applications by owners of constructed minor projects who may desire to seek relicensing thereof.

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*Published in the Federal Register on July 4, 1967 (32 F.R. 9650).

[1] (1) Idaho Fish and Game Department, (2) Commonwealth of Pennsylvania, Department of Forests and Waters, (3) State of Utah, Department of Fish and Game, (4) Public Service Commission of Wisconsin, (5) State of California Department of Fish and Game, (6) State of Washington Department of Game, (7) The Commonwealth of Massachusetts, Division of Fisheries and Game, (8) State of Arkansas, Game and Fish Commission, and (9) The Department of the Interior.

In reviewing the comments in this proceeding we have considered the question as to whether an Exhibit S requirement should be prescribed for applications covering constructed major projects, constructed minor projects and applications for relicensing of constructed minor projects. This proceeding follows an earlier rulemaking proceeding wherein the Commission prescribed Exhibit S as a requirement of license applications for unconstructed major projects pursuant to Section 4(e) of the Federal Power Act and constructed major projects for which relicensing may be sought pursuant to Section 15 of that Act.

In view of the notice of proposed rulemaking in this docket our action here will be limited to prescribing an Exhibit S requirement for unconstructed minor projects. We shall, however, consider the desirability of further amending our regulations to prescribe an Exhibit S type of requirement in license applications for constructed minor projects and constructed major projects, as well as in the relicensing of constructed minor projects. Pending the conclusion of that review and the completion of any Commission action thereon the Commission will require, in applications, in individual cases, particular information of the type covered by Exhibit S as may be desirable, not otherwise provided pursuant to existing general regulations.

The Utah Department of Fish and Game suggests that a more adequate appraisal of the fish and wildlife resources of a project area would be obtained if the U.S. Fish and Wildlife service and the appropriate state fish and game agency be assigned the responsibility of preparing the Exhibit S in lieu of the license applicant. The preparation, however, of exhibits in support of an application is the responsibility of the applicant and should not be transferred to other agencies. Since the applicant is required to consult with the other agencies in connection with the preparation of its Exhibit S and since they will be given an opportunity to comment on the exhibit following its submittal, we believe that substantially the same result will obtain.

The Public Service Commission of Wisconsin requests that the proposed rule be so worded that license applications for minor and major projects under the Federal Power Act which involve systems subject to Wisconsin's regulatory authority reflect determinations and procedures made by Wisconsin regarding plant operation, investment and hydraulic flows. The Wisconsin Commission additionally requests that language be added to the proposed rule requiring a description of the effect of the proposed project on riparians and other water users and the applicant's consultation and cooperation with the state regulatory commission that enforces statutes or regulates the water right of riparian or use, level and flow of water. In our judgment it would be inappropriate to incorporate such proposals in this order.

To the extent that an Exhibit S of a license application may deal with plant operation, investment, flows or water rights of interest to the Wisconsin Public Service Commission, it would be given notice of the filing of such application under existing Commission procedures. In addition, pursuant to the Fish and Wildlife Coordination Act, copies of the Exhibit S would be sent to the appropriate state fish and wildlife agencies, which would include Wisconsin's Department of Resources Development which we understand is interested in the protection of fish and aquatic life. Moreover, the rule as proposed would require consultation by the applicant with these agencies on matters of fish and wildlife prior to the filing of Exhibit S. Thus, both under existing Commission procedures and the proposed rule, ample consultative opportunities are afforded interested parties to make their views known to this Commission prior to licensing of a project.

*The Commission*, acting pursuant to the provisions of the Federal Power Act, as amended, particularly §§ 4(e), 9, 10(a), 10(i), and 309 thereof (41 Stat. 1065, 1068; 49 Stat. 858; 16 U.S.C. 797(e), 802, 803, 825h), *orders:*

(A) Part 131, Subchapter D, Chapter I, Title 18 of the Code of Federal Regulations is amended as hereinafter set forth:

Section 131.6 is amended by revising the first paragraph of the Note appended to the section and adding a new paragraph at the end of the note as follows:

§ 131.6 Application for license for minor project having installed capacity of 2,000 horsepower or less.

* * * * * * *

NOTE: The following requirements are prescribed with respect to the filing of: the project map as Exhibit K; the plans of structure as Exhibit L; and the information relating to the conservation of fish and wildlife resources as Exhibit S.

* * * * * * *

Exhibit S, to be submitted with applications for unconstructed projects, shall show the following information:

The effect, if any, of the project upon the fish and wildlife resources in the project area or in other areas affected by the project and proposals for measures considered necessary to conserve and, if possible, to enhance fish and wildlife resources affected by the project. The exhibit shall include functional design drawings of any fish ladders proposed to be constructed in compliance with section 18 of the Federal Power Act, such other facilities or developments as may be necessary for the protection, conservation, improvement and mitigation of losses of fish and wildlife resources in accordance with section 10(a) of the Act, and cost estimates for such facilities and developments. The Applicant shall prepare this exhibit on the basis of studies made after consultation and in cooperation with the United States Fish and Wildlife Service, Department of the Interior, and appropriate state fish and wildlife agencies and in case of public lands, advise Federal Agencies having jurisdictional responsibilities therefor of its proposed plans. The exhibit shall include a statement on the nature and extent of applicant's consultation and cooperation with the above agencies.

(B) This amendment shall become effective July 27, 1967.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

# OPINION NO. 522

## ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP65-340; TENNESSEE GAS TRANSMISSION COMPANY,[1] DOCKET NO. CP66-263

### OPINION AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS AND DENYING MOTION TO AMEND CERTIFICATE

(Issued June 27, 1967)*

### *Syllabus*

1. Having examined the merits of the proposed service by Algonquin vis-a-vis service by Tennessee. Commission *concludes*, upon comparative analysis, that public convenience and necessity requires service by Tennessee. P. 1132.
2. Conclusion that Tennessee should serve Hartford turns on comparative merits of Algonquin and Tennessee with respect to savings to Hartford and its ultimate consumers. P. 1133.
3. Evidence conclusively establishes that Hartford and its customers will obtain significant economic benefits from addition of Tennessee as second source of gas supply. P. 1133.
4. Record shows that a delivery to Hartford by Tennessee for account of Algonquin would cost Hartford substantially more than if it purchased the requirements directly from Tennessee. P. 1134.
5. Rejecting argument that it has no power to institute Section 7(a) proceedings on its own initiative, Commission states that plain meaning of Section 7(a) is controlling and each of its requirements is met here. PP. 1134, 1135.
6. Commission's right to initiate action under Section 7(a) on its own motion is not placed in doubt by fact that other provisions of the Act, specifically Sections 4(e) and 5(a), expressly provide for action on Commission's own motion while Section 7(a) does not. P. 1136.
7. Mere failure to use authority granted by Section 7(a) does not negate its continuing existence. P. 1137.
8. Instant decision should not be misunderstood as signaling the institution of a 7(a) proceeding every time a pipeline files a certificate application. P. 1138.
9. *Affirming* Examiner's ruling that show cause order permits a finding that Tennessee be required to deliver gas to Hartford at Farmington as well as North Bloomfield, Commission *observes* that law clearly supports such finding, for courts have stated that strict rules of pleading are not applicable to administrative tribunals. PP. 1139; 1170.
10. Congress has entrusted Commission with a mandate to assure natural gas service to ultimate consumers at lowest reasonable rates. P. 1141.
11. Tennessee's ability to provide adequate service to existing customers will not be impaired by issuance of Section 7(a) order directing Tennessee to provide service to Hartford. PP. 1142; 1170.
12. Commission *rejects* Algonquin's contention that it was denied due process and a fair hearing. P. 1142.

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[1] Now Tennessee Gas Pipeline Company, a division of Tenneco Inc.

*Initial decision appears on p. 1163. Rehearing denied by order issued August 25, 1967, 38 FPC 514.

**13. In proceedings originating under Section 7 of the Natural Gas Act and subsequent order to show cause, Commission *issues* certificate of public convenience and necessity to Tennessee; *directs* Tennessee to connect its facilities with and sell gas to Hartford Gas Company and *denies* Algonquin's motion to amend certificate.**
**Commissioner Ross *concurring***
**Commissioner Carver *dissenting***

*Charles E. McGee* and *John T. Ketcham* for Algonquin Gas Transmission Company
*Harold M. Mulvey* and *John G. Hill, Jr.* for the State of Connecticut
*William R. Connole* and *Howard S. Spering* for The Hartford Gas Company
*B. J. Williamson* and *W. C. Braden, Jr.* for Tennessee Gas Transmission Company
*George P. Lewnes* for the Staff of the Federal Power Commission

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

BAGGE, *Commissioner:*

## *Facts*

This proceeding originated with a motion filed on September 22, 1965, by Algonquin Gas Transmission Company (Algonquin), a "natural-gas company" within the purview of Section 1(b) of the Natural Gas Act (Act), to amend the certificate of public convenience and necessity issued to Algonquin on August 24, 1965, 34 FPC 572, in Docket No. CP65-340. By said Motion to Amend Algonquin seeks authorization under Section 7(c) of the Act to construct and operate 23.6 miles of 16-inch lateral line facilities commencing at its present transmission line at Southington, Connecticut, and terminating at North Bloomfield, Connecticut, so as to serve the Hartford Gas Company (Hartford), with 5,071 Mcf of natural gas on a peak day during the winter 1966–67 and 6,500 Mcf on a peak day during the winter 1967–68. The estimated cost of constructing the facilities proposed by Algonquin is $2,887,000.

By order issued February 16, 1966, 35 FPC 230, we directed Tennessee Gas Transmission Company (Tennessee), in Docket No. CP66-263 to show cause why Tennessee, as an alternative to Algonquin's proposal, should not be ordered pursuant to Section 7(a) of the Act to serve a portion of Hartford's natural gas requirements for the years 1966–67 and 1967–68. For purposes of adjudicating the comparative merits of Algonquin's Motion to Amend Docket No. CP65-340 and Tennessee's Docket No. CP66-233, the two dockets were consolidated for hearing and disposition.

The facts and positions of the parties are fully described in an initial decision issued by Examiner Ames W. Williams on September 21, 1966, *infra*, p. 1163. Hence they need be recounted here only briefly. By order issued August 24, 1965, we granted, with conditions, the authorizations sought in *Texas Eastern Gas Transmission Corp.*, Docket No. CP64–5, and *Algonquin Gas Transmission Co.*, Docket No. CP65–340. Docket No. CP64–5 involved a system-wide expansion of Texas Eastern Gas Transmission Corp. (Texas Eastern) from which Algonquin receives its entire gas supply, to increase Texas Eastern's capacity and enable it to meet the growing requirements of, among others, Algonquin. Concurrently, in Docket No. CP65–340 Algonquin proposed a four-year system-wide expansion designed to increase its capacity by 152,730 Mcf in order to meet the 1966–69 requirements of those of its customers which had then executed precedent agreements covering incremental volumes for each of the four years. At the time Algonquin filed its application in Docket No. CP65–340, Hartford had not executed precedent agreements to cover all four years. Hartford had executed, however, precedent agreements to cover the first two years; namely, the year commencing November 1, 1966, and the year commencing November 1, 1967. By order of August 24, 1965, we authorized Algonquin in Docket No. CP65–340 to construct and operate facilities to deliver the following incremental volumes to Hartford:

| Commencing | Rate Schedule F-1 | Rate Schedule WS-1 | |
|---|---|---|---|
| | Maximum Daily Quantity (Mcf) | Maximum Daily Quantity (Mcf) | Winter Contract Quantity (Mcf) |
| Nov. 1, 1966 | 600 | | |
| Nov. 16, 1966 | | 2,500 | 150,000 |
| Nov. 1, 1967 | 3,000 | | |
| Nov. 16, 1967 | | 1,200 | 72,000 |
| Total | 3,600 | 3,700 | |

Subsequent to the issuance of our Show Cause Order, Tennessee filed on February 24, 1966, its "Response to Order to Show Cause," wherein Tennessee stated that it would, on direction of this Commission, establish physical connection of its facilities with and sell natural gas to Hartford. Accordingly, at the hearing held in these proceedings, Tennessee produced a witness and evidence to demonstrate its ability to render such service. Because Tennessee has unallocated capacity on its transmission line, Tennessee's estimated incremental cost of rendering such service to Hartford would be limited to $52,000 required for construction of two metering facilities. The requirements sought by Hartford from Tennessee are as follows:

| Commencing | Rate Schedule CD-6 | Rate Schedule LNG | |
|---|---|---|---|
| | Maximum Contract Quantity (Mcf) | Daily Quantity (Mcf) | Winter Quantity (Mcf) |
| Nov. 1, 1966, a total of | 3,162 | | |
| Oct. 1, 1967, a total of | | 4,386 | 30,600 |
| Nov. 1, 1967, a total of | 3,264 | | |
| Oct. 1, 1968, a total of | | 6,732 | 46,920 |
| Nov. 1, 1968, until Nov. 1, 1988, a total of | 4,896 | | |
| Oct. 1, 1969, until Oct. 1, 1989, a total of | | 9,282 | 52,020 |

## *Historical Background*

In the original certificate proceedings which concerned natural gas service to the geographical area here in question, Algonquin and Northeastern Gas Transmission Company (then a subsidiary of Tennessee) each sought authorization to serve New England markets. After vigorously contested proceedings, the Commission granted each applicant authorization to construct and operate facilities to serve a portion of the total volumes there in question. *Tennessee Gas Transmission Co., et al.*, 9 FPC 262 (1950); *Tennessee Gas Transmission Co., et al.*, 9 FPC 271 (1950); *United Gas Pipe Line Co., et al.*, 10 FPC 35 (1951); *Northeastern Gas Transmission Co., et al.*, 10 FPC 86 (1951); *Algonquin Gas Transmission Co., et al.*, 12 FPC 209 (1953). As a result of those authorizations, certain geographical areas, such as the Hartford area, necessarily contained the transmission facilities of both Algonquin and Tennessee. Therefore, while the Commission in the 1950–1953 period broadly allocated the virgin New England natural gas market, it left open the potential for future competition.

The lateral line which Algonquin proposes to construct would commence at Southington, Connecticut, and terminate in North Bloomfield, Connecticut. In addition to serving Hartford at the North Bloomfield delivery point, the new lateral would enable Algonquin to back feed gas into its Farmington-Southington lateral, which serves Hartford at Farmington and also Connecticut Light and Power Company at Southington and Plainville.

Hartford presently purchases gas from Algonquin at the following four delivery points: Rocky Hill-Cromwell, Farmington, Glastonbury, and Bloomfield. At Rocky Hill-Cromwell, Farmington, and Glastonbury the gas is physically delivered through Algonquin's pipeline facilities to Hartford. At the Bloomfield delivery point, on the other hand, the gas is physically delivered to Hartford by Tennessee for the account of Algonquin. In other words, Tennessee delivers the gas to Hartford through Tennessee's facilities while Hartford pays Algonquin directly under the provisions of Algonquin's rate schedule. Algonquin in turn is obligated to reimburse Tennessee with a volume of gas equal to that which Tennessee delivers to Hartford for Algonquin's account.

These proceedings arise from Hartford's need to receive gas at a new, fifth delivery point located at North Bloomfield. Beginning in the latter part of 1964 Algonquin and Tennessee maintained negotiations looking to the establishment of a new delivery point on Tennessee's line for the account of Algonquin. Negotiations, however, were terminated when Algonquin informed Hartford that the two pipeline companies were unable to conclude an agreement which would satisfy Hartford's needs. These events then prompted Algonquin's proposal to construct the 23.6-mile lateral here in question.

Interveners in these proceedings are the Public Utilities Commission of Connecticut and Hartford. Hearing commenced on March 20, 1966, recessed from March 21 until April 4, and concluded on April 7, 1966. Initial briefs were submitted on May 9, 1966; staff submitted its brief on June 6, 1966; and reply briefs were filed on June 27, 1966. Staff and the interveners, PUC of Connecticut and Hartford, filed briefs supporting service to Hartford by Tennessee. The proceedings are before us on exceptions to the Examiner's initial decision of September 21, 1966, which denied Algonquin's Motion to Amend and issued an order under Section 7(a) of the Act directing Tennessee to serve Hartford. Exceptions to the initial decision were taken by Algonquin and Hartford.

### *Holding*

We agree with the Examiner's conclusion that Algonquin's Motion to Amend should be denied and that an order should issue under Section 7(a) of the Act requiring Tennessee to serve Hartford. Accordingly, with the additional findings expressed herein, and to the extent consistent herewith, we adopt the initial decision and order as our own.

### *Discussion*

The proceedings were heard upon a consolidated record under the doctrine of *Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327 (1945). We have examined the merits of the proposed service by Algonquin vis-a-vis service by Tennessee, and conclude upon comparative analysis that the public convenience and necessity require service by Tennessee. Since the requirements of economic feasibility[2], financial feasibility, gas supply[3], and Hartford's market needs[4] are satisfied by both Algonquin and Tennessee and accordingly are not in issue, our conclusion turns on the comparative merits of Algonquin and Tennessee with respect to savings to Hartford and its ultimate consumers.

*Savings to Ultimate Consumers*

The evidence conclusively establishes that Hartford and its customers will obtain significant economic benefits from the addition of Tennessee as a second source of gas supply. The record in these proceedings shows direct dollar benefits to Hartford in the amount of $685,000 for the first five years of service from Tennessee. These savings are due in large part to the elimination of Hartford's need to construct a liquified natural gas plant estimated to cost $1,160,000 since Tennessee will provide Hartford with LNG service. A portion of the savings can also be attributed to Tennessee's lower rates.[5] The Connecticut Public Utilities Commission, which actively participated throughout these proceedings, has made clear that the savings realized by Tennessee's service as a second source of gas supply will be reflected in Hartford's filings with the Connecticut Commission, and accordingly will inure to the benefit of Hartford's customers.

The addition of Tennessee as a second source of supply provides public benefits. We perceive no harm to any party. As noted above, Hartford and Hartford's customers will obtain substantial rate benefits from increased operating economies. At the same time, Algonquin will suffer no loss of presently certificated sales to Hartford. Hartford will purchase from Algonquin the entire volumes for which it has contracted under precedent agreements covering 1966 and 1967. Moreover, Hartford has included data in its presentation which indicates that its plan for future operations includes, subject, of course, to our certification, substantial additional gas supplies from Algonquin as a means of realizing maximum operating efficiency.

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[2] The Examiner ruled in his initial decision that Algonquin's proposal would not be economically feasible. By rolling-in the revenues and costs of Algonquin's proposal to serve Hartford in Docket No. CP65–340 with the proposal presented by Algonquin's Motion to Amend in these proceedings, however, Algonquin's proposed lateral would yield a rate of return of sufficient magnitude to justify a comparative analysis of service by Algonquin vis-a-vis service by Tennessee.

[3] Algonquin's gas supply is based upon the volumes certificated to be sold by Texas Eastern Gas Transmission Corporation to Algonquin in Docket No. CP64–5. Tennessee's gas supply is based upon the volumes certificated in Docket Nos. CP65–120 and CP66–180.

[4] Hartford's market estimates were not contested in these proceedings.

[5] Assuming a 66⅔ per cent load factor, 14.73 psia, and correction for Btu differential (1023 Btu gas is delivered by Tennessee whereas Algonquin delivers 1033 Btu gas), Tennessee's filed rate would average 57.2¢ per Mcf while Algonquin's rate at the time of hearing averaged 59.8¢ per Mcf. Subsequent to the hearing, rate reductions were filed by Algonquin. Its current rate averages 58¢ per Mcf (Tr. p. 741) at 66⅔ per cent load factor.

It should be noted that our order of February 16, 1966, stated that the possibility of a delivery by Tennessee for the account of Algonquin should be examined. In this regard, evidence was introduced into the record which showed a substantial imbalance in deliveries between Algonquin and Tennessee resulting from the existing Tennessee-Algonquin "delivery for the account of" arrangements. It was this imbalance that caused Tennessee to decline Algonquin's offer to establish a new delivery to Hartford for the account of Algonquin. Moreover, the record shows that in these proceedings a delivery to Hartford by Tennessee for the account of Algonquin would cost Hartford substantially more than if Hartford purchased the requirements here in question directly from Tennessee. Under a "delivery for the account of" arrangement, Hartford would buy its requirements from Algonquin under Algonquin's rate schedule even though the gas physically was delivered to Hartford by Tennessee. Thus, Algonquin's higher rates and Hartford's need to construct a liquified natural gas plant would require Hartford to expend over the first five years of operation $685,000 more than it would expend by purchasing the gas from Tennessee under Tennessee's rate schedule.

In its brief on exceptions, Algonquin raises several issues. The threshold issue concerns the legality of our February 16, 1966, Order to Show Cause issued under Section 7(a) of the Act. The issue, as well as the others, will be discussed below.

### *The Legality of the Order to Show Cause*

Algonquin argues that our Show Cause Order of February 16, 1966, is unlawful in that it lacks statutory sanction. The argument made is that Section 7(a) of the Act and the Regulations thereunder require that a person file an application requesting a Section 7(a) directive, and that the Commission has no power to institute Section 7(a) proceedings on its own initiative. We disagree.

Section 7(a) of the Act provides:

> Section 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue

burden will be placed upon such natural-gas company thereby: Provided, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purpose, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

The plain meaning of Section 7(a) is controlling. Congress provided that whenever the Commission (1) "after notice and opportunity for hearing," (2) "finds such action necessary or desirable in the public interest," (3) "it may by order direct a natural-gas company * * * to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person * * * engaged * * * in the local distribution of natural gas to the public," (4) "Provided, That the Commission shall have no authority to compel * * * such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers." Each of those requirements is met in these proceedings: notice was issued on February 16, 1966, and hearings were held thereafter; we find issuance of a Section 7(a) order "necessary or desirable in the public interest"; Hartford is "engaged * * * in the local distribution of natural * * * gas to the public"; and, as discussed below, service by Tennessee will not impair Tennessee's ability to provide adequate service to its existing customers.

Algonquin, and the dissent, would impose a further limitation on the Commission's authority under Section 7(a); we would be precluded from acting except where there is a formal application filed requesting us to act, presumably filed by a "person or municipality engaged or legally authorized to engage in the local distribution of natural gas to the public." While there is no statutory basis for any such limitation and no statement in the legislative history that any one intended such a limitation, the restriction is sought to be spelled out by a series of negative implications—(1) by the fact that the legislative history is barren of any express statement that the Commission could act on its own initiative, (2) by the presence of express language to this effect in other sections of the Act (and in Acts upon which the Natural Gas Act was patterned), (3) by the alleged predominance of Sections 7(c) and (f) over Section 7(a) and (4) by the fact that the Commission has not hitherto exercised authority under Section 7(a) on its own motion. While in our opinion none of these contentions, even if taken at face value, would serve to negate the express statutory language (at least in the absence of direct and authoritive legislative history to this effect), none of them is, in our opinion, persuasive.

It is, of course, true that Section 1(21) of the Interstate Commerce Act, 49 U.S.C. 1(21), upon which Section 7(a) was at least in part patterned, provides that the ICC may act under that section "upon complaint or upon its own initiative without complaint" (see also Section 214(a) of the Communications Act of 1934, 47 U.S.C. 214(d)). This does not prove or even indicate that Section 7(a), which both as originally introduced and as passed made no reference either to a complaint or Commission action on its own motion, was intended to be limited to the former.

In explaining Section 7(a), drafted by the Commission, to the House Committee, the Solicitor of the Commission, Mr. DeVane, expressly referred to the "similar" provisions in the Federal Power Act, the Interstate Commerce Act, and the Communications Act authorizing the regulatory commissions acting under each of these statutes to order physical connections to support his contention that Section 7(a) "is not in any sense new" (Hearings before a subcommittee of the House Committee on Interstate Commerce, H.R. 11662, 74th Cong. 2nd Sess., p. 37). He did not suggest that Section 7(a) of the Natural Gas Act was broader or more limited than any of the corresponding sections in the other above-named statutes although the Federal Power Act expressly denies the Commission authority to act on its own initiative while the other two Acts expressly grant such authority. However, two years earlier, FPC Commissioner Seavey and Mr. DeVane had made similar remarks to the Congressional committees studying the provisions of the interconnection section of what is now Section 202(b) of the Federal Power Act at the time when that section, like Section 7(a), contained no language either specifically granting or specifically denying complaints on the initiative of the Commission (Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 1st Sess., Part 1, pp. 392, 533). Significantly, Section 202(b) of the Federal Power Act was subsequently amended to limit the Commission's authority to cases in which a complaint was filed by specified parties. The Congress, when the Natural Gas Act was passed two and a-half years later, made no such limitation.

The right of the Commission to initiate action under Section 7(a) on its own motion is not placed in doubt by the fact that other provisions of the Act, specifically Sections 4(e) and 5(a), expressly provide for action on the Commission's own motion while Section 7(a) does not. Sections 4(e) and 5(a) also expressly provide for action upon complaint of specified groups. It would be just as rational to argue that these groups are not empowered to invoke 7(a) unless specifically authorized as it is to argue that the Commission cannot invoke 7(a) unless specifically authorized. Such an interpretation would leave us in a rather embarrassing situation in which we would have a statute which is unusable because no one can invoke it. If one were to speculate as to the difference between the language in Sections 4(e) and 5(a) and that in Section 7(a), it would seem reasonable to assume that in the case of Sections 4(e) and 5(a) there was a desire to limit the entities which could initiate action while in Section 7(a) there was not.[6]

Furthermore, we fail to understand the suggestion that Section 7(a) is somehow subordinate to Section 7(c) and therefore cannot be used to achieve a second supply[7]. In *Home Gas Co.* v. *Federal Power Commission*, 231 F. 2d 253 (CADC–1956) cert. denied 352 U.S. 831 (1956), in support of the contention that a second source of supply could be made available to a community only pursuant to an application filed under Sections 7(e) and (g) and not pursuant to Section 7(a), it was argued that Section 7(a) was intended to have limited application and therefore had to be accorded a restrictive reading. The Court rejected the claim, stating in words applicable here (231 F. 2d at 258):

> To uphold petitioner's contentions would in effect force us to consider the above noted sections as being mutually exclusive. This we cannot do. Indeed, we find them complementary. No basis exists in the legislative history of the Act, and certainly none in the plain language of the text, for the creation of a third limitation on § 717(f)(a), as petitioners urge, namely where the area involved is already being served by a natural-gas company.

While the Commission, to the best of our knowledge, has not previously acted on its own under Section 7(a), there is no administrative construction of the Act of which we are aware, to say nothing of any construction contemporaneous with the Act's passage, which negates such authority.* It is, of course, clear that mere failure to use authority granted does not negate its continuing existence. See, *e.g.*, *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

Two recent cases on statutory interpretation are also in point with regard to the whole problem of what our authority in this area is. In *American Trucking Association, Inc.* v. *A. T. & S. F. Ry. Co.*,

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[6] While the analogous provisions of the Interstate Commerce Act and Communications Act talk in terms of complaints generally, those acts in other sections define the class of persons who may file complaints.

[7] Section 7(a) in its present form was a part of the Natural Gas Act from the beginning. Section 7(c) in its present form came into the picture later and, as originally adopted in 1938, had a much more limited scope than it does now.

* [Editor's note. The Commission issued a show cause order under Section 7(a) in *Panhandle Eastern Pipe Line Company,* 12 FPC 1357, see order denying rehearing issued August 25, 1967, 38 FPC 514].

35 U.S. L. Week 4465 (U.S. May 30, 1967), the Supreme Court in interpreting the Interstate Commerce Act stated (at p. 4468):

> The very complexities of the subject have necessarily caused Congress to cast its regulatory provisions in general terms. Congress has, in general, left the contents of these terms to be spelled out in particular cases by administrative and judicial action * * *

and at p. 4469:

> * * * We cannot accept arguments based upon arguable inference from non-specific statutory language, limiting the Commission's power to adopt rules which, essentially, reflect its judgment in light of current facts * * *

In *Niagara Mohawk Power Corporation* v. *F.P.C.*, 379 F. 2d 153 (CADC–1967), the Court of Appeals for the District of Columbia Circuit in interpreting the Federal Power Act stated:

> The Act is not to be given a tight reading wherein every act of the Commission is justified only if referable to express statutory authorization. On the contrary, the Act is one that entrusted a broad subject-matter to administration by the Commission, subject to Congressional oversight, in the light of new and evolving problems and doctrines.

This decision should not be misunderstood as signaling the institution of a 7(a) proceeding every time a pipeline files a certificate application. This is not our intention. We expect the pipelines and their customers to continue to plan for future needs and to prepare and submit the best method they can conceive for accommodating those needs. We further expect that their proposals will be best suited to the public interest and that there will be few occasions to exercise our authority under Section 7(a) to consider alternatives.[8]

This case constitutes an exception. When natural gas service was introduced into the New England area, it was apparent that two pipelines could not be certificated to afford that service unless each was assured a share of the then existing markets. Accordingly, in an endeavor to provide a basis for the development of two viable sources of supply which eventually would be capable of competing for what obviously would be greatly increased market needs, the Commission broadly allocated the New England markets. At the time Algonquin first made its proposal rejected herein, there apparently had been created a *de facto* division of markets between Algonquin and Tennessee with neither competing for the load growth in areas served by the other and with their customers apparently treating the *status quo* as what was necessarily to be the pattern for the future. Thus, when Hartford needed service at North Bloomfield, it negotiated with Algonquin, its traditional source of supply. Hartford left it to Algonquin to negotiate an exchange with Tennessee, which had the facilities necessary to make the deliveries. When the negotiations between Algonquin and Tennessee broke down, the result was an application by Algonquin to construct over $2,800,000 worth of pipeline to bring gas to an area adjacent to the existing Tennessee line. We could not be certain but that this Commission's past actions might have been misunderstood as intending to freeze the New England markets to the detriment of appropriate competition. In these circumstances, we concluded that the alternative should be explored.

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[8] Of course, the number of situations in which this authority can be utilized is greatly limited by the limitations contained in Section 7(a) itself.

It, of course, does not follow that it would be appropriate for the Commission to institute a 7(a) proceeding on its own motion in all cases where our preliminary examination of a 7(a) or 7(c) application indicates that there might be a cheaper source of supply available than the one sought in the application. This is merely an indicator which would raise the possibility that two or more suppliers are not competing with each other. Other, less objective, factors must also be studied and balanced with the cost factor in determining whether a 7(a) proceeding should be instituted.

*The Scope of the Show Cause Order*

The Examiner ruled that our Show Cause Order permits a finding that Tennessee be required to deliver gas to Hartford at Farmington as well as at North Bloomfield (*i.e.*, the new area which Hartford has recently been enfranchised to serve). Algonquin's argument points to the language of the Show Cause Order, which repeatedly refers to service in the "new area." With respect to Algonquin's argument, the Examiner stated, "This view, in the Examiner's opinion, is unreasonable if permitted to prevail would defeat by a technicality the very purpose of the Show Cause Order."

The law clearly supports the Examiner's finding, for the courts have stated that strict rules of pleading are not applicable to administrative tribunals. "The key to pleading in the administrative process is nothing more than an opportunity to prepare." 1 Davis, *Administrative Law*, § 8.04 at p. 525. The position of the federal courts with respect to this issue was elucidated in *New York C. & H.R.R.* v. *I.C.C.*, 168 F. 131, 138–39 (S.D.N.Y. 1909), where the court declared in reviewing an I.C.C. order:

> If this order were a judgment of a court, we should without hesitation say that the facts alleged in the petition did not support it. The Interstate Commerce Commission is, however, an administrative tribunal dealing with practical problems. So long

> as parties affected by its orders appear and are fully heard, we think it would be most unfortunate to deny its power to grant such relief as the facts shown upon the investigation should call for, even though such facts might be outside the issues raised * * * The strict rules of pleading should not be held applicable to it. *Before we declare an order of the Commission invalid as being outside the issues, we think that we should be satisfied that it is outside the issues actually presented to the commission upon which the parties were heard.* [Emphasis added.]

Similarly, in *Northwestern Bell Telephone Co.* v. *Nebraska State Railway Commission*, 297 U.S. 471 (1936), the Supreme Court disposed of a contention that a commission's notice did not cover the action taken by emphasizing, "Possibility of doubt as to the purpose of the hearing was removed in its course before the Commission." Professor Davis states in his treatise (1 Davis, *Administrative Law*, § 8.04 at p. 525):

> Deficiencies in a pleading may be cured by informal communication, by formal amendment, by a bill of particulars, by prehearing conferences, or by ample continuances at the hearings. And the question on review is not the adequacy of the original notice or pleading but is the fairness of the whole procedure. [Footnotes omitted.]

Assuming, arguendo, that the Show Cause Order issued in these proceedings was defective, the defect was cured and Algonquin nevertheless was afforded a fair hearing: (1) On the opening day of hearing and thereafter Algonquin was made aware that delivery at Farmington was in issue; (2) Algonquin was present at an informal prehearing conference on February 2, 1966, at which time the issues were discussed; (3) The proposed deliveries at Farmington were briefed and discussed by Algonquin, among others; and (4) A recess in the hearing was taken between March 21, 1966, and April 4, 1966, throughout which period Algonquin knew that Farmington was in issue. Accordingly, we shall herein order Tennessee to deliver gas to Hartford at Farmington as well as at North Bloomfield.

### *Competition and the Duplication of Facilities*

By certificating both Tennessee and Algonquin in the original proceedings, the Commission necessarily created a potential for competition between the two companies. A division of markets was essential in the early 1950's if two independent companies were to survive. Needless to say, they have survived and prospered to the point where they are now in a position of being able to compete for the growing New England consumer load. Indeed, one beneficial result of the division was to insure that there would exist in the future viable alternate sources of supply available to serve the distribution customers in the New England market area. The growth of gas consumption in Hartford's general service area has caused this potential to be realized. The essence of the issue facing us is whether we should grant Algonquin's Motion to Amend, thus preserving Algonquin's status as Hartford's sole supplier, in the face of a record which clearly shows that service by Tennessee would save Hartford $658,000 over a five-year period, that Tennessee's further investment would be approximately $2,800,000 less than that required by Algonquin, and that service by Tennessee would eliminate Hartford's need to invest $1,160,000 to construct a liquified natural gas plant. Equally pertinent is that Algonquin will lose none of its existing load and will suffer no loss of existing revenues as a result of our directing Tennessee to serve Hartford. Hartford will purchase from Algonquin the entire volumes of gas for which it has contracted under precedent agreements. Moreover, as pointed out earlier in this opinion, Hartford has included data in this record which indicates Hartford's intent to purchase substantial additional gas supplies from Algonquin in future years. These economic facts compel denial of Algonquin's Motion to Amend, and support issuance of an order under Section 7(a) of the Act requiring service by Tennessee.

In two recent decisions we have made clear "that a pipeline has no vested interest in a market that must be perpetually protected by regulation. *Columbia Gulf Transmission Company*, Opinion No. 512, issued January 24, 1967, 37 FPC 118 at p. 130. "A monopoly * * * should not be automatically and consistently protected where it is demonstrated that competition would produce greater benefits to the public." *Ibid.* See also *City of Hamilton, Ohio*, Opinion No. 513, issued January 24, 1967, 37 FPC 209 at p. 217. The Act is clear on this point. Section 7(g) provides:

> Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

And, the Court of Appeals stated in *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 169 F. 2d 881, 884 (CADC–1948):

> Nothing in the Natural Gas Act suggests that Congress thought monopoly better than competition or one source of supply better than two, or intended for any reason to give an existing supplier of natural gas for distribution in a particular community the privilege of furnishing an increased supply.

Congress has entrusted this Commission with a mandate to assure natural gas service to ultimate consumers at the lowest reasonable rates. On this record, service by Tennessee will effectuate that mandate.

*Due Process*

The Examiner found that Tennessee is able and willing to render the service sought by Hartford and that such service will not impair Tennessee's ability to provide adequate service to its other customers. Algonquin excepts to this finding on the ground that Tennessee's evidentiary presentation is insufficient in that it was primarily a "case by reference" to Tennessee's Docket No. CP66–180 to which Algonquin was not a party.

Tennessee filed its application in Docket No. CP66–180 on December 3, 1965, and on March 18, 1966, 35 FPC 398, we issued a temporary certificate authorizing Tennessee to construct, but not to operate, the facilities requested therein. On May 10, 1966, 35 FPC 715, a permanent certificate was issued to Tennessee authorizing the construction and operation of the proposed facilities. Exhibit G–1 of Docket No. CP66–180 was incorporated by reference in these proceedings as item D by Reference. Item D consists of a flow diagram entitled "Flow Diagram Reflecting Peak Day Design New England Area," and shows that upon certification of Docket No. CP66–180 Tennessee would have 9,696 Mcf per day of unallocated capacity in New England from which to render service to Hartford. On the basis of this flow diagram and the testimony of Tennessee's witness, the Examiner found, and we also find, that the issuance of an order under Section 7(a) of the Act directing Tennessee to provide the service sought by Hartford will not impair Tennessee's ability to provide adequate service to its existing customers.

We do not agree with Algonquin's contention that it was denied due process and a fair hearing. On the opening day of hearing, Item D was admitted into evidence, without objection, in accordance with the requirements of Section 1.26(3)(ii) of our Rules of Practice and Procedure. It was thus made a part of this record. All parties were then afforded an opportunity to cross-examine Tennessee's witness, Mr. Stark, who supported Item D. More than thirty pages of the transcript concern cross-examination of Mr. Stark by counsel for Algonquin. Among other subjects, counsel cross-examined Mr. Stark's direct testimony that Tennessee had sufficient unallocated capacity to render the service sought by Hartford. Moreover, Algonquin was afforded the opportunity, but chose not, to present evidence in rebuttal of Mr. Stark's testimony and Item D. As the record stands before us, we conclude that the Examiner's procedures in admitting Item D into evidence, affording Algonquin an opportunity to cross-examine Tennessee's witness, and permitting Algonquin, if it chose, to present testimony and exhibits in rebuttal, satisfy the requirements of due process and a fair hearing.

We are not persuaded by Algonquin's argument that due process was denied because Docket No. CP66–180 had not been decided at the time hearing commenced in these proceedings. The issue presented here does not concern the Examiner's reliance on extra-record material considered under the doctrine of official or judicial notice. Rather, the content of Item D was made a part of this record under the customary methods used in admitting any evidence. We are not here dealing with a conclusion of fact arrived at in a different proceeding without affording the parties to these proceedings an opportunity to cross-examine. We are dealing, rather, with evidence which was introduced in another proceeding and which was also independently introduced in these proceedings as an exhibit subject to cross-examination and rebuttal by all parties. The testimony of Mr. Stark and the content of Item D are entitled to the same dignity afforded any other testimony and evidence.

In addition, Mr. Stark testified that, independent of Docket No. CP66–180, Tennessee has 4,866 Mcf of unallocated capacity on its transmission line in New England available for service to Hartford. The reason is that subsequent to Tennessee's construction of the facilities authorized in Docket No. CP65–120, adjustments were made in Tennessee's maximum contract obligations which released capacity on its transmission line. On the basis of that unallocated capacity itself, Tennessee physically can meet the first two years of Hartford's maximum contract requirements and shows the capacity to meet 4,866 Mcf of Hartford's third year maximum contract requirements of 4,896 Mcf.

It is too late for Algonquin now, with the benefit of hindsight, to argue that Mr. Stark was not the proper witness to testify concerning Tennessee's unallocated capacity. That argument should have been made to the Examiner at the proper time during the hearing. All parties to these proceedings were given the opportunity to challenge witness Stark's qualifications and testimony by cross-examination and rebuttal, and to object to the admission into evidence of Item D. That is all that due process requires.

### *Additional Exceptions*

Algonquin has taken exception to several other matters, including the form in which the Examiner's decision was written. We have considered each of those exceptions and find each to be without merit.

Hartford's single exception remains for disposition. Hartford excepts to the Examiner's statement that Hartford has entered into a precedent agreement with Algonquin for Hartford's requirements during 1968–69 and 1969–70. The Examiner's statement is in error, and instead should provide that Hartford informed Algonquin that Hartford would enter into such precedent agreement only after Algonquin received the authorization it seeks in these proceedings.

*The Commission further finds:*

(1) Hartford Gas Company is a person engaged in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(2) Algonquin Gas Transmission Company and Tennessee Gas Transmission Company are "natural-gas companies" within the meaning of Section 1(b) of the Natural Gas Act.

(3) The motion filed by Algonquin Gas Transmission Company to amend the certificate issued in Docket No. CP65–340 is not required by the present or future public convenience and necessity and accordingly should be denied.

(4) It is necessary in the public interest that an order issue under Section 7(a) of the Natural Gas Act directing Tennessee Gas Transmission Company to establish physical connection of its transportation facilities with, and sell natural gas to Hartford Gas Company at North Bloomfield, Connecticut, and Farmington, Connecticut.

(5) The issuance of an order under Section 7(a) of the Natural Gas Act directing Tennessee Gas Transmission Company to serve the natural gas requirements of Hartford Gas Company in Docket No. CP66–263 will not impair Tennessee Gas Transmission Company's ability to render adequate service to its customers.

*The Commission orders:*

(A) Tennessee Gas Transmission Company is hereby directed, pursuant to Section 7(a) of the Natural Gas Act, to connect its facilities with and sell natural gas to Hartford Gas Company at North Bloomfield, Connecticut, and Farmington, Connecticut.

(B) Sales of natural gas by Tennessee Gas Transmission Company to Hartford Gas Company shall be limited to the following quantities:

| Commencing | Rate Schedule CD–6 | Rate Schedule LNG | |
|---|---|---|---|
| | Maximum Contract Quantity (Mcf) | Daily Quantity (Mcf) | Winter Quantity (Mcf) |
| Nov. 1, 1966, a total of | 3,162 | | |
| Oct. 1, 1967, a total of | | 4,386 | 30,600 |
| Nov. 1, 1967, a total of | 3,264 | | |
| Oct. 1, 1968, a total of | | 6,732 | 46,920 |
| Nov. 1, 1968, until Nov. 1, 1988, a total of | 4,896 | | |
| Oct. 1, 1969, until Oct. 1, 1989, a total of | | 9,282 | 52,020 |

(C) The certificate herein issued to Tennessee Gas Transmission Company and the order issued pursuant to Section 7(a) of the Natural Gas Act in Docket No. CP66-263 are conditioned upon Tennessee Gas Transmission Company's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set out in paragraphs (a), (b), (c)(4), (e) and (f) of Section 157.20 of said Regulations.

(D) The motion filed by Algonquin Gas Transmission Company to amend the certificate issued in Docket No. CP65-340 is hereby denied.

(E) Except as herein granted, the exceptions to the Examiner's decision are hereby denied.

(F) The Examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this Opinion and order.

Commissioner Ross *concurring*.

Commissioner Carver *dissenting*.

Ross, *Commissioner*, *concurring:*

I concur with the majority's opinion and its decision in this case. My only purpose in writing this statement is to indicate why I don't think that the Commission will need to institute many actions on its own motion under Section 7(a).

In the typical case, a distributor seeks out the most economic source of gas from a pipeline. If the pipeline has no objections and possesses the supply and capacity to satisfy the distributor's requirements, the pipeline or the distributor files an appropriate application with the Commission. The Commission then evaluates the proposal in the light of possible alternatives. If the pipeline does object, the distributor files an application under Section 7(a). This represents good management—the normal situation in which the distributor is satisfying its public service responsibilities by trying to obtain the best and least expensive service available for its customers.[1]

However, there may be those few situations where a distributor is less concerned with the efficiency and economy of its service. It is those rare cases where the Commission may be required, in the public interest, to protect a distributor from itself.

In the case where a distributor has one source of supply, it may be reluctant to take any action which might tend to end long-time personal friendships. It may be fearful of retribution if it seeks to continue its existing supply, and in addition, to acquire a second source of supply. There may be the fear that its application for a second supplier would be denied in which event it would be left solely to the mercy of its original supplier. Also, some distributors are not aggressive, but simply prefer the *status quo*. Why rock the boat? Further, there may even be an understanding between potentially competitive pipelines which neither the distributor nor the second potential pipeline supplier is anxious to assume the burden of upsetting. In these cases, the public is served by a Commission ready, willing and able to step in and tread where others fear to tread. To put it bluntly, the Commission does the distasteful or uncomfortable work of and for someone else when the public is thereby served.

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[1] See, for example, the successful efforts of Lynchburg, Hamilton, Chattanooga, and Carolina Pipeline Co. to obtain a second, and more advantageous source of supply.

This is one of those exceptional cases where neither the distributor nor the second potential pipeline supplier filed an appropriate application seeking to realize the several advantages inherent in direct service by Tennessee. Indeed, it is a case which appears to involve some of the factors discussed above. That there undoubtedly is more to this case than meets the eye is apparent from the reactions of Hartford and Tennessee. Why would Hartford fail to file an application under Section 7(a) when the economics seemed so favorable and apparent? Why did Hartford initially support Algonquin's application and then, only after the Commission instituted this proceeding on its own motion, vigorously argue in favor of direct service by Tennessee? Tennessee initially assumed the role of an innocent bystander and, like Hartford, after the Commission instituted this case, strongly supported the recommendation of Staff and Examiner for service directly by Tennessee. Are our Staff and the Examiner that much better informed regarding the potential savings to Hartford?

Thus, it seems apparent that the institution of 7(a) proceedings on the Commission's own motion will not occur too frequently. However, it can be expected whenever and wherever it becomes necessary, as I have said before, to protect a distributor from itself for the benefit of its customers.

CARVER, *Commissioner, dissenting:*

The Commission today overrules the cases wherein fifteen years ago it divided the New England natural gas market between two pipelines on a distributor-by-distributor basis.[1] The Commission today also rewrites a Congressional enactment to its taste, transmuting Section 7(a) of the Natural Gas Act from its proper and established function of shielding would-be municipal or distributor customers of pipelines against arbitrary withholding of service, into a new and frightening efficacy as a weapon to enable the Commission itself to assume the function of feasibility and service planning to an unprecedented and unauthorized extent.

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[1] The Commission is somewhat less than forthright about the reversal of the cases certificating the two pipelines on a distributor-by-distributor basis. On page 1131 it is asserted that the authorizations were "to serve a portion of the total volumes there in question," while on page 1138 reference is made to the need that each pipeline be "assured a share of the then existing markets * * * the Commission broadly allocated the New England markets." Thus by paraphrasing and interpreting the cases, it is made to appear that the Commission originally intended the result ordered today. Such an assertion will not survive a reading of the cases.

Reversal of past Commission policy is a Commission prerogative, so long as the charter authority of the Commission is not exceeded. But the method of reversing a policy presents a separate kind of question—one which ought to align Commissioners whose views on the wisdom of the reversal may be divergent. In an industry where multimillion-dollar business investments are made in reliance on regulatory pronouncements, stability of policy is at a premium. One hundred eighty degree changes ought to be supported by impeccable procedures.

### *Action Sua Sponte under Section 7(a)*

The threshold question is whether Section 7(a) authorizes the Commission to proceed as it did. Algonquin urged that it did not at every stage of the proceedings.[2] Discussion of this basic jurisdictional question was avoided by Tennessee completely, and was treated only casually by Staff,[3] and was recognized as material only by Hartford.[4]

The Commission's power to institute Section 7(a) proceedings on its own initiative is concededly hitherto untested. The legal analysis to support this was undertaken at the Commission level after briefs to the Commission were all submitted.

The rationale for consideration of this threshold legal question of the Commission's authority to act *sua sponte* shifted somewhat. One ground was that the meaning of Congressional silence on the subject of the Commission authority to act on its own motion was to be deduced from a comparative reading of Section 7(a) with Section 202(b) of the Federal Power Act. Further analysis of legislative history took into account the comparability of two other statutes, after the Commission's attention was called to the fact that during Congressional consideration of that section the suggestion was made that 7(a) is patterned after provisions in the Interstate Commerce Act and the Communications Act, which provisions authorize those Commissions to direct involuntary extensions of service. It was recognized that the significance of these references lay in the fact that both the ICC and FCC may require the extension of common carrier service in a proceeding *upon complaint or upon its own initiative without complaint*, and that the relationship of such language in somewhat related regulatory schemes should not be ignored by the Commission in determining the scope of its authority under Section 7(a).

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[2] Algonquin's Brief, May 9, 1966, pp. 39–48; Reply Brief June 27, 1966, pp. 45–46; Brief on Exceptions, Oct. 21, 1966, pp. 36–40.

[3] Staff initial brief, of June 6, 1966, takes up the question at pp. 36–42, without citation of authority or reference to legislative history. Staff's brief on exceptions of November 10, 1966, pp. 17–23, similarly fails to do more than disagree with the contention that Section 7(a) does not authorize the Commission to act on its own motion.

[4] Hartford's brief of June 27, 1966, closes upon the question. Its author, a former Commissioner, fails however to address himself to the question of whether the Commission on its own motion may institute Section 7(a) proceedings, in the light of the fact that it had never done so before. Hartford's brief opposing exceptions, November 10, 1966, faces the issue squarely but not helpfully, arguing that it is "axiomatic" that the Commission could do on its own motion what it could do on the motion of an affected party, and citing a Show Cause Order issued subsequent to this case and relying on the "precedent" of this case.

As the Opinion discloses, the Commission finally settled upon the primary ground of "plain meaning" of the statute.[5] It also attempts to negate the thrust of the argument in this dissent, namely, that the meaning of Section 7(a), when read with the related regulatory statutes, with other provisions of the Natural Gas Act, and with long-continued administrative interpretation is not only not "plain" to the effect that the Commission has the authority to act on its own motion, but on the contrary indicates the opposing construction quite strongly. As presently framed in the Opinion, the real basis for the Commission's conclusion that Section 7(a) should be read as authorizing action *sua sponte* is difficult to identify.

Taking the Commission's generalized arguments as adequate concession that the legislative history *is* relevant delving more deeply into that question, and other aids to interpretation of the statute, yields, as stated, a contrary conclusion.

Section 202(b) of the Federal Power Act permits the Commission to order electric interconnections when consistent with the public interest "upon application of any State Commission or of any person engaged in the transmission or sale of electric energy." Section 7(a) of the Natural Gas Act does not contain this limiting language. This fact, taken alone, would support the Commission's conclusion.

But as noted earlier, Section 7(a) was not modeled on the Federal Power Act as much as it was on the basic regulatory legislation, particularly that applicable to railroads and communications. The forerunner of Section 7(a) made its first appearance as a separate part of an early version of the Wheeler-Rayburn Act, which became the Federal Power Act of 1935. At that time, both Sections 7(a) and 202(b) [then numbered differently] had identical language. Both were patterned after the language of the comparable section under the Interstate Commerce Act which is the undisputed model for subsequent regulatory legislation in the communications, gas, and electric industries. Section 1(21) of the Interstate Commerce Act specifically provided and still provides for interconnection proceedings *sua sponte*:

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[5] A statute is subject to literal interpretation under the plain meaning rule only "where the intention of the legislature is so apparent from the face of the statute that there can be no question as to the meaning * * *" *People ex rel Wood v. Sands*, 102 Cal. 12, 36 Pac. 404, 405 (1894).

> (21) Power of commission to require adequate facilities or extension of line; penalty.—The commission may, after hearing, in a proceeding upon complaint *or upon its own initiative without complaint*, authorize or require by order any carrier by railroad subject to this chapter, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this chapter, and to extend its line or lines: Provided, That no such authorization or order shall be made unless the commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public * * * Feb. 28, 1920, c. 91, sec. 402, 41 Stat. 478. [Emphasis supplied.]

Similarly, Section 214(d) of the Communications Act of 1934, itself a counterpart of 1(21) of the Interstate Commerce Act, provided explicitly for action on that Commission's own motion:

> (d) The Commission may, after full opportunity for hearing, in a proceeding upon complaint *or upon its own initiative without complaint*, authorize or require by order any carrier, party to such proceeding, to provide itself with adequate facilities for performing its service as a common carrier and to extend its line; but no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public * * * June 19, 1964, c. 652, §214, 48 Stat. 1076. [Emphasis supplied.]

The 1935 Wheeler-Rayburn Act was passed after the title dealing with natural gas regulation had been deleted without explanation. The remaining electric titles contained the forerunner of 202(b), which, as the Commission noted, was changed from the form which it had when originally introduced. The Commission on pages 1136–1137 suggests that Section 202(b) was "amended". It was changed in the legislative process prior to passage; strictly speaking it was not "amended" and has not been since enactment. The changes which were made in it, were to emphasize the voluntary nature of any program for interconnections and coordination and I take issue with my colleagues that the legislative history shows that the making of these changes in the Federal Power Act indicated that the original draft of what became 202(b) in a different form, and what became Section 7(a) without change was *not* subject to the interpretation which 7(a) has when read with the statutes upon which it was modeled directly. It is far more reasonable to conclude that the changes made in Section 202(b) from the time of the introduction of the first bill until the Federal Power Act was passed represented an abundance of Congressional emphasis on the philosophy of voluntarism, the same philosophy originally indicated simply by omitting the *sua sponte* language contained in the acts upon which the power and gas acts were both modeled.[6] Certainly it cannot be argued, considering the ICC and FCC models, that the Congress did not know how to give the Commission the power to act on its own motion.

Indeed, Congress showed its ability clearly to specify when the Commission has authority to initiate action on its own motion in other sections of the Natural Gas Act. Section 4(e) contains the specific language "upon its own initiative without complaint;" so does Section 5(a). Section 5(b) is explicit in a slightly different form. These sections were concurrently enacted with Section 7(a). Section 7(f) though subsequently enacted, provides that the Commission "upon its own motion or application" may hold hearings and determine service areas, strong evidence of the continuing Congressional view that authority to act absent a complaint was a matter for explicit Congressional determination.

The superior appositeness of the Interstate Commerce Act as the primary model of the Natural Gas Act is found in the fact that certification authority and related powers embodied in Section 7 of the Natural Gas Act are not found in the Federal Power Act to this day. It should also be remembered that the Federal Trade Commission, not the Federal Power Commission, conducted the investigations which led to enactment of the Natural Gas Act and Parts II and III of the Federal Power Act.[7]

The Courts have noted this comparability. In *Federal Power Commission* v. *Natural Gas Pipeline*, 315 U.S. 575, 584, the Supreme Court stated: "Section 5 of the Act was modeled on the provisions of the Transportation Act, 49 U.S.C. #13, 15 * * *" In *Hope Natural Gas Co.* v. *Federal Power Commission*, 196 F. 2d 803 (CA4–1952), the Circuit Court of Appeals in interpreting Section 4(e) recognized the close relationship between the Interstate Commerce Act and the Natural Gas Act saying:

> There can be little doubt as to the correctness of the Commission's decision, if it be remembered that the language of the

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[6] When words used in a prior statute are omitted from subsequent legislation, a change in meaning is presumed. *Allen* v. *Grand Central Aircraft*, 347 U.S. 535 (1954). See *Sutherland, Statutes and Statutory Interpretations*, (3d ed.), sec. 5201.

[7] Section 1(a) of the Natural Gas Act states "as disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 and other reports made pursuant to the authority of the Congress * * *" as the reason for the natural gas regulation embodied in the Natural Gas Act.

> suspension provision of the statute here under interpretation was taken bodily from the Interstate Commerce Act and that it has long been given the interpretation placed upon it by the Commission here. (196 F. 2d 803, 806-807.)

The same position was voiced in several committee reports and Congressional hearings on the proposed legislation. For example, the discussion on page 37 of the House Committee Hearings in setting out the purpose of Section 7(a) stated:

> Section 7(a) of this bill authorized the Commission to require extensions from the pipelines to communities for the purpose of giving service to the communities. A provision similar to that seems to be quite important so as to authorize the Commission under certain circumstances to require a pipe-line company to furnish gas to a local distribution company.
>
> That is similar to a provision in the Federal Power Act by which under certain circumstances physical connections may be required between electric lines; and, of course, physical connections are made between railroads and between telephone companies. In other words, the provision here is not in any sense new. It is in all the other Congressional Regulatory Acts of this nature.

The direct relationship between Section 7(a) and Section 1(21) of the Interstate Commerce Act was also pointed out during the hearings on H. R. 11662 (pp. 41-42):

> MR. COOPER. That is what I was trying to get; you say you would have the power to require them to extend their lines?
>
> MR. DE VANE. Congress has already conferred similar jurisdiction over other forms of transportation. Under the Interstate Commerce Act the I.C.C. has authority to make railroads extend their lines, if it is reasonable to do so.

During the hearings Solicitor De Vane commented:

> Assume also that another community along the pipeline wants gas, and the company does not want to sell gas to that community. Section 7 would authorize the community *to apply to the Commission* to compel the company to give the service. [Emphasis added] Hearings on H.R. 11662, p. 38.[8]

The only reference to 7(a) during the Congressional debates made the same point:

> * * * I remind the House of this fact. When we pass this bill without any apparent opposition, the people of this country demanding it, it will affect not only the great cities where gas

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[8] **At no time during the hearings was there any reference to the Commission initiating a 7(a) proceeding on its own motion.**

> is consumed, *but the little fellow in my State back through the rural sections in whom I am interested, where these pipelines have been running for years, and perform no service to the people along them. They are under no regulation whatever. After this bill is passed, I think the rural sections, having given the rights away to those lines feeding the great metropolitan sections of the country, will find through the machinery of this law a medium of relief so that service will come to them* * * *
> Cong. Rec. Vol. 81, p. 6724. [Emphasis supplied.]

The point that certification authority is not present in the Federal Power Act has been mentioned. As originally enacted in 1938, the Natural Gas Act required certificates of public convenience and necessity only when one pipeline entered an area serviced by another,[9] to *prevent* competition.[10] In 1942, Section 7 was amended to extend certification requirements to all pipeline extensions irrespective of the existence of an original supplier, and to eliminate the inhibition against competition.[11] The initiative for a proposal under the new Section 7(c) rested with the applicant, but the legislative history and established administrative practice show that the Commission, in addition to the choice of authorizing or rejecting an application, is given the power to attach reasonable conditions to a certificate. The history of the 1942 amendments shows that Congress contemplated that this conditioning authority among other things encompassed the extension of service to customers adjacent to the pipeline.[12] The point of the rationale for Section 7(c) disappears if the Commission's authority under Section 7(a) were as broad as the Commission now finds it to be. Legislative concern about the breadth of the proposed new conditioning authority was allayed by the assurance *that the applicant need not accept the certificate.*[13]

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[9] Public Law No. 688, 75th Congress, Chapter 556, 3rd Session [H.R. 6586], 52 Stat. 825, June 21, 1938.

[10] Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 75th Cong., 1st Sess., on H.R. 4008, March 24 and 25, 1937, at pp. 81–84. See also Cong. Debates, 81 Cong. Rec. at pp. 6720–6733.

[11] Secs. 7(c) and 7(g), 56 Stat. 83 (1942); 15 U.S.C. § 717f(c) and § 717f(g).

[12] Hearings on H.R. 5249 (1941) at pp. 23–24:

MR. SOUTH. I want to ask one further question with reference to the language beginning line 25, page 3.

COMMISSIONER MANLY. Yes sir.

MR. SOUTH. I presume those certificates, as a general practice, are issued upon an application?

COMMISSIONER MANLY. Yes; invariably upon application.

MR. SOUTH. As a practical matter, the authority given to the Commission here could be used—and I am wondering if it is generally used—for the purpose of broadening or extending the application in such a way as to better serve the public interest.

COMMISSIONER MANLY. That has been the case, I am sure, in the administration of all of the cases that have come before this Commission. It has been primarily this, sir: That a company, in making an application for a certificate, would set up a claim that it would do such-and-such things; that it would put a line in at such-and-such time; that it would have such-and-such gas reserves; that it would charge such-and-such rates.

MR. SOUTH. *Or serve a particular section of the community sought to be served?*

COMMISSIONER MANLY. *Yes sir; that it would serve a particular community, and so forth.* [Emphasis supplied.]

Section 7(a) is neither subordinate nor superior to Section 7(c). The sections are, or ought to be, complementary. The legislative history of Section 7(c) sheds light on how Congress intended 7(a) to be utilized.

*Home Gas Company* v. *Federal Power Commission*, 231 F. 2d 253 (CADC–1956), supports a restrictive reading of Section 7(a); it only superficially supports the proposition for which the commission opinion cites it. The petitioner in that case argued that the only means of obtaining a second source of supply was under a certificate granted pursuant to Sections 7(c) and 7(e) and not by order under 7(a). The District of Columbia Court of Appeals rightly concluded that 7(c) did not restrict 7(a), regarding the nature of *gas service* requested under 7(a). In holding that the only restrictions imposed by Congress were those contained in the proviso (*i.e.*, that the Commission could not order facilities enlarged or the existing source impaired), the Court obviously was not ruling that the Commission was free to impose on the pipeline companies planning functions reserved to them in Section 7(c). The assertion that this Commission cannot institute a 7(a) action on its own motion is an implicit limitation not negatived in the case.

Two additional points should be remembered: one is that this is the *first* case to apply Section 7(a) in this fashion, twenty-nine years after the Natural Gas Act was passed. The Supreme Court's language in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 513–514, seems applicable:

> Thus for over 10 years the Commission has never claimed the right to regulate dealings in gas acreage. Failure to use such an important power for so long a time indicates to us that the Commission did not believe the power existed. In light of that history we should not by an extravagant, even if abstractly possible, mode of interpretation push power granted over transportation and rates so as to include production.[14]

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[13] Hearings on H.R. 5249 (1941), at p. 23.

COMMISSIONER MANLY. Now, what the Commission does under ordinary conditions is to require those conditions to be set forth in the authorization for a certificate that is accepted by the company as a condition precedent to the actual issuance of the certificate, so that in all intents and purposes the company has a right to reject a certificate containing any conditions which are unreasonable, onerous, or have no relevancy to the issue.

MR. SOUTH. That is what I have in mind. If they are too burdensome, then the application could be withdrawn.

COMMISSIONER MANLY. They could come back before the Commission and ask for a rehearing if they regard the terms and conditions as being onerous.

[14] This position has been stated by the Supreme Court on several occasions, *e.g.*, *Federal Trade Commission* v. *Bunte Bros.*, 312 U.S. 349, and *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U.S. 294.

Another point is that since 1951 this Commission has repeatedly requested legislative amendments to Section 7 to authorize the Commission to require pipelines to interconnect facilities, which draft legislation invariably has made provision for initiation of such proceeding on the Commission's own motion as well as by application.[15]

The Commission's Regulations under the Natural Gas Act enumerate the proper form and procedures for initiating 7(a) proceedings. Section 156.1 specifies "Who may apply," as "Any person or municipality as defined in section 2 of the Natural Gas Act engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public * * *"[16] Nothing is said regarding initiation of action under the section on the Commission's own motion.

The Natural Gas Act and its legislative history show no support for the nuances of application of Section 7(a) reflected in this Opinion. The self-denying limitations urged in it do not save the Commission's action from the fatal step of transgressing the legislative line. However desirable some may think it to be for the Commission to have the dominant planning role, I cannot find that Congress has yet given it to us.

### *Savings*

The Commission asserts (p. 1133) that its "conclusion turns on the comparative merits of Algonquin and Tennessee with respect to savings to Hartford and its ultimate consumers" and that service by Tennessee will effectuate a mandate to assure natural gas service to ultimate consumers at the lowest reasonable rates.

These attractive generalities do not withstand close scrutiny of the record. As to "savings", the record shows neither the fact of savings, nor that they will be passed on to Hartford's customers.

The "savings" are of two kinds—cheaper gas, and economies related to Hartford purchasing LNG service from Tennessee rather than constructing its own LNG plant.

The possibility that Hartford might be able to earn money, as presumably Tennessee will, from operating an LNG facility is not mentioned.

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[15] Early proposals encompassed a new Section 7(j) which authorizes the Commission "* * * upon its own motion or upon complaint * * *" to order interconnections during any war or when the Commission determines an emergency exists due to a shortage in gas, facilities or other causes.

More recently, the Commission has proposed new subsections 7(i)(1) and (2). Subsection 7(i)(1) would authorize interconnection of pipeline facilities "upon its own motion or upon application or complaint * * *" Similar authority was proposed under subsection 7(i)(2) in the case of emergency. (See S. 1843 and H.R. 7586, 88th Congress.) The proposal was renewed to the 89th Congress (FPC 1964 Annual Report, p. 9) but the proposed bills were not actually transmitted.

[16] Section 156.1. Made effective by Order No. 234, 26 F.R. 4847, June 1, 1961, 25 FPC 1028.

The discussion on "savings" is completely speculative. Its weakness is demonstrated by an examination of the assertion that "a portion of the savings can also be attributed to Tennessee's lower rates." Recognizing that the record made before the Examiner is inadequate, the Commission resorts to a footnote to justify this vital point:

> [5] Assuming a 66⅔ percent load factor, 14.73 psia, and correction for Btu differential (1023 Btu gas is delivered by Tennessee whereas Algonquin delivers 1033 Btu gas), Tennessee's filed rate would average 57.2¢ per Mcf. while Algonquin's rate at the time of hearing averaged 59.8¢ per Mcf. Subsequent to the hearing, rate reductions were filed by Algonquin. Its current rate averages 58¢ per Mcf. (Tr. p. 741) at 66⅔ percent load factor. (p. 1133.)

Thus the Commission makes two vital assumptions; a 66⅔ percent load factor and a rate no longer in effect. Based upon existing filed schedules, Algonquin's rates are lower than Tennessee's at monthly load factors of 40–65% and at 85–100%, and Tennessee's rates are lower *only* at the 65–80% bracket. No analysis is presented of actual load factors on a monthly basis, the basis upon which real dollars change hands. The point, of course, is that the record is utterly devoid of the solid information necessary to support the savings upon which the opinion is so strongly postulated.

The record is worse on the presumptive operating savings to Hartford by reason of having access to LNG service from Tennessee. The LNG rates upon which the Commission makes comparisons *have not yet been accepted* for filing under Section 4(e) of the Natural Gas Act; the plant has not been placed in service and its construction and operating costs are not known; and construction and operations of LNG plants present new and relatively untested technologies, the cost factors of which are not fully stabilized.

The Commission presumably would notice its order wherein Tennessee was granted the certificate to build the LNG plant in question. The order in Docket No. CP65–352 specified that deficiencies of the rates to meet actual unit costs of LNG service would *not* be assessed against any other class of service.

Even indulging all the most favorable assumptions, Hartford's "savings" related to LNG service over the next five years would be around $120,000 annually. Leaving out the income tax factor, which would halve the net benefit to Hartford, the speculative savings to Hartford would be under one percent of its annual revenues. The Connecticut Commission's assurances notwithstanding, rate reductions to Hartford's customers appear completely unlikely.

An unspoken assumption of the Opinion is that LNG service is available to Hartford only if Algonquin is denied a certificate and Hartford becomes a contract demand customer of Tennessee. Such a requirement of Tennessee's *proposed* LNG tariff is accepted at face value. The Commission and the record are silent on possible alternatives, such as requiring a change in the tariff as a condition of the Commission's certificate. Speaking hypothetically, revision of the Tennessee LNG tariff to permit LNG service to other than contract demand customers answers the argument about savings made in the Commission's opinion because the bulk of the projected savings are related to LNG service.

Also, if the Commission would notice its own docket it would see that it has herein glossed over some policy questions on the rate design of LNG service. Tennessee in seeking LNG plant construction authority, showed estimated sales to 18 customers of a maximum of 121,454 Mcf per day and a maximum winter quantity of a little over 3 million Mcf. The 18 precedent agreements of course did *not* include Hartford. Now the Commission is giving Tennessee the benefit of a doubt to be resolved not here, but in CP65-352, namely, that there will be enough warm days in winter to liquefy the additional quantities of gas necessary to meet Hartford's needs. Upon whom does the burden of miscalculation fall, and who takes the responsibility for it?

### *The order requiring examination of alternatives in the public interest*

In the section on "Savings to Ultimate Consumers" the Commission "notes" that the order of February 16, 1966, specified that the possibility of a delivery by Tennessee for the account of Algonquin should be examined.

It certainly did so order. The full language is as follows:

> This show cause proceeding will, of course, not be limited solely to the question of whether Tennessee could provide the service directly to Hartford consistent with the standards of Section 7(a), but should also include the comparative benefits, if any, if such service were to be rendered by Algonquin either by exchange agreement with Tennessee or by transportation by Tennessee for the account of Algonquin.

*Scenic Hudson*[17] came down from the Court of Appeals on December 29, 1965. It may be inferred that when this Show Cause Order was issued just six weeks later, the lessons of that case were still fresh in the minds of the Commissioners.

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[17] *Scenic Hudson Preservation Conference, et al. v. Federal Power Commission, and Con. Ed. Co. of N. Y., Inc.*, 354 F. 2d 608 (CA2-1965), cert. denied 384 U.S. 941 (1966).

It seems, however, that such a surmise is erroneous. For my own part, I cannot see how any Commissioner who participated in the issuance of that Show Cause Order could countenance the record before the Commission in this case as conforming with the spirit of *Scenic Hudson*.

The Commission "notes" the *Scenic Hudson* standard in the section of the Opinion relating to savings. It is taken to be disposed of, apparently, by the record on "imbalances"—that is, one of the alternatives directed to be examined was presumably examined and found wanting on this ground.

The testimony on imbalances in deliveries related to the existing exchange agreements, of which there were five.[18] Such testimony, in addition to not relating to the question specified by the Commission, also fails to show "a substantial imbalance." It does show, at Tr. 540, an imbalance in favor of Tennessee on March 1, 1966, of 81,000 Mcf. But it also shows that the imbalance does not impose physical limitations upon additional exchanges (Tr. 552), and that imbalance is not a static situation. It fluctuates from month to month and year to year, and at times favors Algonquin (Tr. 583). The record even shows a reduction of the imbalance of 25% in the 21-day period from March 1, 1966, to March 22, 1966 (Tr. 582).

### *Duplication of Facilities and Competition*

The discussion of duplication of facilities and competition in the Commission's Opinion contains inconsistencies deserving of comment.

Although the cases wherein two pipelines were certificated to serve New England are being overruled to the extent that they allocated the market on a distributor-by-distributor basis, the Commission's action in certificating the two pipelines is given retrospective approval by saying that the Commission at the time consciously envisioned the time when the two pipelines would actively compete with each other.

If the Commission had such prescience 14 years ago, it didn't make it explicit, and so far as anything said then by the Commission discloses, the exact opposite was more nearly in their minds.[19] But in either event, the Commission can be read as saying now that duplication of facilities can further the objective of competition.

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[18] Docket No. G-8872, Aug. 15, 1955, covering service by Tennessee to "Hartford Gas Company (Hartford), a customer of Algonquin;" Docket No. G-13146, Nov. 15, 1957, covering service by Algonquin to "The Housatonic Public Service Company (Housatonic) for the account of Tennessee;" Docket No. G-17392, April 1, 1959, covering service by Algonquin Tennessee for sale to the Housatonic Public Service Company its requirements for resale in the Wallingford, Connecticut area; Docket No. G-17409, April 15, 1959, covering service by Tennessee to Connecticut Gas Company for the account of Tennessee; and Docket No. CP65-217, May 12, 1965, covering service by Tennessee to New Haven Gas Company, "as existing customer of Algonquin" for the account of Algonquin.

At the same time, the Commission finds the public interest served by avoiding duplication of facilities, citing in support of certificating Tennessee in this case the fact that Hartford will thus be able to avoid building an LNG plant, and Algonquin will be able to avoid building the proposed Bloomfield lateral.

What serves the public interest can be both duplication of facilities and avoidance of duplication of facilities. This is sound enough pragmatism, but in a case which changes old rules and makes new ones in so many ways as this one, the public and the regulated industry are deserving of somewhat better and clearer explanation of what is being done and why.

We are assured that the special efficacy of Section 7(a) to spur competition or encourage interventions was Congressionally intended. We are also assured that this power will be exercised only where two pipelines intersect, or where the service area of one pipeline company reaches to within a mile or two of the other pipeline, as here. We are not told how the Congress made this sub-distinction.

One weakness of the Commission's opinion is its narrowness of view as to what competition really is. The results of the decision today are more anti-competitive than competitive. For example, by broadening the proceeding beyond the so-called "new area" of North Bloomfield, and by denying Algonquin permission to build the new line, the Commission has awarded Tennessee a monopoly far more rigid than that which Algonquin has enjoyed in its reliance on Commission certificates. Algonquin is prevented from improving its system to maintain viability to compete for suburban growth. It loses the opportunity to interconnect with the Farmington service line and thus "backfired" into that system. The loss to Algonquin must eventually redound to the detriment of its remaining customers but in addition both Hartford and Connecticut Gas will lose the option they now have to require the two pipelines to bid against each other for newly franchised areas near North Bloomfield and additional requirements of other new service areas. This view of competition as having a larger frame of reference than opening the Hartford market to a new supplier may not be the more persuasive, but an expert administrative body might not make its decision on the arithmetic of the immediate transaction—especially when the arithmetic differences are not only thin, but highly speculative.

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[19] For a detailed study of the entire proceedings for certification of the New England, which reaches this conclusion and is most critical of it, see the doctoral dissertation of Rev. Thomas John Shanley, O. P., entitled *The Introduction of Natural Gas into New England and the Public Interest, 1950–1953*, University of Notre Dame, 1966.

There is a circularity in the Commission's Opinion wherein the discussion about what Section 7(a) means is followed by a discussion of what it does not mean. We are told: "This decision should not be misunderstood as signaling the institution of a 7(a) proceeding every time a pipeline files a certificate application. This is not our intention." (p. 1138) The concurring Commissioner at least is plain-spoken and understandable about the standard he would use in determining when to apply Section 7(a); the Commissioners speaking for the Commission leave nothing but doubt.

How it views the exchange agreements, and pipeline reliance on the pattern established in them is not made clear. Although a "cheaper source of supply" is said to be merely an indicator, and that other, less objective factors, must also be studied and balanced with the cost factor in determining whether a 7(a) proceeding should be instituted, the "other, less objective factors," are not identified. And such "other, less objective, factors" not only were not "studied and balanced with the cost factor in determining whether a 7(a) proceeding should be instituted", that is prior to the issuance of the Show Cause Order, but they were not studied and balanced in the hearing which followed the Show Cause Order or at all.

What the Commission is doing with Section 7(a) speaks much louder than what it says it will do.

The Commission's *action* today stands for this kind of rule: For any market at or near the point of intersection of two pipelines, the objective of competition requires that new growth increments of that market shall be awarded to a second pipeline if it has a cheaper rate, or can serve the growth areas with a lesser expenditure in facilities, or both.

This stifles more than serves competition. With such a rule facing them, can we expect pipelines with higher costs to vigorously compete in the areas where the customers are capable of being served with gas from a cheaper pipeline?

Furthermore, this preoccupation with the rate level is an unfortunate precedent, as is the uncritical acceptance of "avoided investment".

The ramifications are numerous. Intertwined in this case, and not surfaced either in the record or in the Commission's Opinion, are other issues which the Commission is grappling with—lateral line policy, rate design, incremental pricing, and whether the Commission ought to take into account the factor of "growth" in looking to the health of a regulated company.

No challenge faces regulation greater than that related to recognizing and accommodating to competitive forces, both within the natural gas industry and from other fuel sources. This challenge will require the broadest perspective, the greatest vision. Now is not the time to return to the simplistic test of cheaper rates, or formulary views about the wisdom of having multiple supply sources. The problem is really a great deal more complex than the Commission today recognizes.

### *The Record*

I have not at any time said that under all the facts and circumstances the public interest would not be served by making Tennessee's gas and LNG service available to Hartford. The burden of this dissent is that the record before the Commission doesn't support such action, both from the standpoint of a Section 7(a) show cause proceedings being selected as the legal vehicle, and from the standpoint of the failure of parties, and particularly Staff counsel, to comply with the letter and spirit of that show cause proceeding, its legality aside.

The failure of the record to develop the alternatives specified by the Commission to be considered has been repeatedly mentioned. Why this is so becomes evident as the Transcript of the hearing is reviewed.

The question posed in the Show Cause Order was whether a "delivery for the account of" arrangement might serve the public interest. Algonquin's witness Thorn addressed himself to this in his prepared testimony. He described the existing agreements and how they worked, the negotiations with Tennessee and with Hartford for getting a new one to serve the North Bloomfield area, and why, in his view at least, these negotiations fell through. (Tr. 80–81, 84, 91–92.) Hartford's witness Willis, also on direct examination and also responsive to the Show Cause Order, outlined Hartford's experience with them (Tr. 135–140, 198). Tennessee's witness did not touch the subject at all on direct. Staff put in no direct case on this, or any alternative.

At the outset of the hearing, Staff Counsel paraphrased the Show Cause Order. He interpreted the motive of the Commission in a manner which presaged his theory of the case. (Tr. 41, 42.)

Staff Counsel's theory was different from and inconsistent with that specified in the Show Cause Order. In his vigorous cross-examination of Algonquin's witnesses, Hartford's witnesses, and Tennessee's witness, he directed his questions toward a purpose made explicit in his briefs, namely, that the parties were misconstruing the distributor-by-distributor pattern of certification of the two pipelines in 1953, and that the two pipelines had followed a pattern of conduct which suggested collusion and worse. (Tr. 43, *et seq.*; 469, *et seq.*; 563, *et seq.*; Tr. 619, *et seq.*)

An antitrust cast of the case was made explicit: (a) beginning at Tr. 456, Staff counsel suggested an agreement not to compete, which witness Thorn denied; (b) at Tr. 467, a "design" for non-competitiveness was suggested; (c) at Tr. 557, it was suggested that Tennessee was "holding off"; (d) at Tr. 579, Tennessee's witness Stark was cross-examined on conversations looking toward "division of the market."

In his brief to the Examiner, counsel was candid:

> * * * we shall, more importantly, through a historical documentation of a parade of incidents in conjunction with a discussion of the related malignant web of circumstances spewed on this record, expose that Algonquin and Tennessee, whether by design or happenstance have contrived not to compete with each other for markets in New England. (Staff Brief of June 6, 1966, p. 4.)

Under the subtitle "FAILURE TO COMPETE—DESIGN OR HAPPENSTANCE???? Staff counsel concludes that it was "obligatory upon the Examiner and the Commission to resolve aforehand that every questionable fact, if indeed any questionable facts exist, will be mitigated in favor of certification of a second supplier for Hartford." (Staff Brief of June 6, 1966, p. 23.)

That the Examiner was not impressed by this theory is explicit in his opinion:

> The propriety of the exchange agreements between Algonquin and Tennessee previously approved by the Commission are not in issue in this proceeding and despite the Staff counsel's collateral attacks upon their validity, and [in] the absence of any evidence to the contrary, it must be assumed that such agreements are in the public interest.
>
> The record, while revealing that competition between Algonquin and Tennessee for the distributor market in the case of Hartford was something less than vigorous, did not produce any probative evidence of collusion or of a conspiracy between the pipelines to stifle competition. Such a charge by Staff counsel must, therefore, fall as unsupported. (Examiner's decision issued 9/21/66, p. 1169.)[20]

The Commission's Opinion today gives no more weight to the charge of collusion than the Examiner did. (The concurring opinion of Commissioner Ross emphasizes the possibility of collusion, however.) But the Commission does not grapple with the evident fact that a record prosecuted on a theory which presupposes the illegality or possible criminality of the alternatives designated by the Commission for examination for its compliance with the public interest is hardly likely to comply with the requirements of the Show Cause Order or of *Scenic Hudson.*

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[20] Staff counsel did not except to the Examiner's findings that the previously certificated exchange agreements were not improper. But in his brief to the Commission he persists in his criticism, calling them "odious." (Staff Brief of Nov. 10, 1966, p. 8.)

*Tennessee's position*

The Commission grants a certificate to a reluctant Tennessee, which twice had to remind Staff counsel that it had no proposal, and was not a certificate applicant. (Tr. 122; 210.) It does *not* support the interpretation of Section 7(a) which the Opinion sets forth, maintaining, as we have noted earlier, a discreet silence. It emphasizes in its Brief that the onus for its entry into the Hartford market is upon Hartford, not upon Tennessee. (Tenn. Brief on November 10, 1966, p. 12.)

Tennessee's reply brief of June 27, 1966, states the competition issue so clearly that I adopt it:

> The mere existence from the beginning of natural gas service to New England of two pipeline suppliers has assured the general benefits of competition to New England. This was the choice of the Commission in the beginning. *It* determined that there would be two suppliers and certificated the geographic location of the respective pipeline systems. The resulting presence of two suppliers to the entire geographic area has assured the fruits of realistic competition to New England. Tennessee's expansion of service to, and broadening of types of service for, the parts of New England accessible from its system must be to a large extent the result of the sure knowledge that if it did not do the job, Algonquin or some other competitor would.
>
> Staff, however, narrows its view to only those very limited areas contiguous to both the Tennessee and Algonquin systems. Examination of the geographic location of these systems, however (see, for example, Exhibit #7), demonstrates that these contiguous areas are indeed very limited in number and involve very few customer companies. Each of the distributors companies serving these limited areas has been from the beginning either a customer of Tennessee or a customer of Algonquin. It is the distributing company customer who has the unilateral right to elect how and from whom it will seek its natural gas. Thus, as Mr. Stark stated (Tr. 575):
>
>> Mr. Lewnes, the competition has always been there. The distribution companies recognize that there are two pipeline companies there, and that they are both willing to sell gas.

> The *distribution company* has the unilateral right to purchase its gas from whom it sees fit, based on its own economies, based on its own planning. [Emphasis supplied.]
>
> It is obvious, of course, that a distributor must give consideration to a multitude of items before determining if indeed a second supplier is desirable. Hartford's evidence and brief in these proceedings demonstrate the studies and decisions with which a distributor is confronted in deciding on a second supplier * * * (pp. 4–5.)

### *Hartford's position*

Hartford, too, was consistently reluctant to take the responsibility for the Commission's ordered proceedings, affirming during the hearing before the Examiner, and in briefs and argument to the Commission, that it was *not* a Section 7(a) applicant.

### *Recommendations for remand*

Hartford's need for gas is unquestioned. On the basis that a dissenter should be prepared to take the responsibility of stating how he would decide, I can state that I do not believe a dismissal of the proceedings is necessary, even on the jurisdictional question, if Hartford will, belatedly, take the responsibility of filing a bona fide Section 7(a) application.

If it does so, then an emergency interconnection on a "delivery for the account of" basis could be made in a fashion to preserve the rights of all parties, while a remand to build a true *Scenic Hudson* comparative record would be in order. Such a remand could build a record of all the alternatives, together with the facts upon which the implications of changing the pattern of service to New England as previously certificated, could be considered.

## INITIAL DECISION
## OF THE PRESIDING EXAMINER GRANTING
## CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 21, 1966)

WILLIAMS, *Presiding Examiner:* This matter came on for hearing pursuant to Federal Power Commission (Commission) order of February 16, 1966, 35 FPC 230, consolidating the above-captioned dockets and requiring Tennessee Gas Transmission Company (Tennessee)[1] to show cause why it should not be required under Section 7(a) of the Natural Gas Act to establish a physical connection of its facilities with those of The Hartford Gas Company, a distributor, (Hartford) and render service as indicated therein.

Previously, on August 24, 1965, 34 FPC 572, the Commission certificated expansions by Texas Eastern Gas Transmission Company (Texas Eastern) and

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[1] Now Tennessee Gas Pipeline Company, A Division of Tenneco Inc.

Algonquin Gas Transmission Company (Algonquin). Texas Eastern is the sole supplier of Algonquin and its authorized expansion was, in part, to meet the latter's requirements for its customers who had entered into four-year precedent agreements for the years 1966 through 1969.

Hartford, a long-time customer of Algonquin, however, signed a contract for only the first two years of expanded service, with the gas to be delivered at existing delivery points, and Algonquin's facilities were accordingly tailored to meet the second-year requirements.

With the expectation of supplying Hartford additional increments of gas in 1968 and 1969, Algonquin on May 21, 1965, advised the Commission that it would seek an amendment to its certificate in Docket No. CP65–340 to include facilities to serve Hartford's requirements for such years provided Hartford would execute a precedent agreement for its 1968 and 1969 requirements.

On September 22, 1965, Algonquin filed a motion to amend the certificate issued to it on August 24, 1965, to include the installation of 23.6 miles of 16-inch pipeline, extending from its main transmission line at the junction of the existing Southington lateral in Connecticut in a generally northerly direction and terminating at or near North Bloomfield, Connecticut. It is alleged that this lateral, costing some $2,887,000, will enable Hartford to obtain a supply of gas for the Bloomfield area without having to augment its entire distribution system.

Algonquin further alleges that in addition to providing Hartford with a source of gas in the Bloomfield area, the proposed lateral will permit Algonquin to supplement existing facilities serving the Farmington, Connecticut, area of Hartford's present distribution system, as well as the Bristol-Plainville area of The Connecticut Gas Company's distribution system. The new lateral would intercept the existing line to Farmington about midway on the route to Bloomfield, which connection would permit backfeeding of the system when necessary. Hartford has signed a precedent agreement with Algonquin, dated September 16, 1965, for additional gas as follows:

| | Maximum Daily Quantity (Mcf at 14.73 psia) | | |
|---|---|---|---|
| | F-1 | WS-1 | Total |
| Additional required; | | | |
| November 1968 | 3,400 | 2,000 | 5,400 |
| November 1969 | 3,400 | 2,200 | 5,600 |
| Total | 6,800 | 4,200 | 11,000 |

The motion to amend the certification of August 24, 1965, however, raises a problem in that Algonquin now proposes to deliver at the terminus of the new lateral the 1966 and 1967 increments of gas previously authorized for delivery at existing delivery points by way of facilities designed and constructed for such purpose.

On November 8, 1965, the Commission requested Algonquin to furnish certain supplemental information relating to its motion to amend the certificate of August 24, 1965. In particular, Algonquin was required to detail (1) what portion of the authorized increase in contract demand volumes of firm and winter peak service would be delivered, through the facilities sought in its amendment, to communities now being served and to communities to be served pursuant to Hartford's newly enfranchised territory; (2) what, if any, facilities, in addition to those included in the motion to amend, would be required to serve the distribution systems proposed to be constructed by Hartford in the newly chartered territory and (3) whether or not the existing Wethersfield lateral, now supplied by the existing Cromwell delivery point, can be extended by Hartford to render satisfactory service in the new area in lieu of Algonquin's proposed facilities.

The essence of Algonquin's reply of November 22, 1965, to these queries is (1) that of the peak volume of 6500 Mcf required for the year 1967–1968, 1800 Mcf per day would be used for service in four communities not now receiving service (Simsbury, Avon, Granby and East Granby) and 4700 Mcf per day would be required by existing customers; (2) Hartford will extend its lines to the communities of Canton and Burlington, but that no present plans have been made for initiating service in the communities of Bolton, Hebron, Marlborough, East Hampton and Portland and (3) it is not economically feasible to extend the Wethersfield lateral to render the services proposed in the amendment.

Upon receipt of Algonquin's explanation, the Commission issued the order dated February 16, 1966, previously mentioned, which consolidated for hearing the Algonquin application with a show-cause order against Tennessee.

The Commission took notice of the fact that the new area proposed to be served by Hartford, through use of the volumes to be delivered from the proposed Algonquin lateral, is presently traversed by Tennessee and that the proposed Algonquin lateral would, if constructed, parallel and duplicate the existing 16-inch pipeline of Tennessee. Hartford filed a petition on February 24, 1966, to intervene in the scheduled hearing and the Public Utilities Commission of the State of Connecticut on March 10, 1966, filed a notice of intervention. In the interim, Tennessee responded to the order to show cause, stating that upon completion of the facilities proposed in Docket No. CP66–180 it will have sufficient unallocated capacity in its New England pipeline system to render the additional gas service required by Hartford and will, upon direction by the Commission, establish a physical connection with Hartford in order to render the required service.

The formal hearing began on March 21, 1966, and concluded on April 7, 1966. A record of some 710 pages was compiled, including 23 exhibits and 10 items by reference to the files of the Commission. The issues were thoroughly and competently briefed by all parties to the proceeding.

### *Algonquin's Position*

In its amended application Algonquin seeks authority to use the proposed 16-inch lateral to deliver to Hartford, at locations not designated in its original application, a major portion of the maximum daily quantities of gas certificated by the Commission on August 24, 1965, and no additional deliveries are herein proposed. The amounts authorized in the original proceeding in excess of existing contract quantities are:

*Maximum Daily Quantity—Mcf at 14.73 psia*

| Commencing | Rate Schedule F-1 | Rate Schedule WS-1 |
|---|---|---|
| November 1966 | 600 | 2,500 |
| November 1967 | 3,000 | 1,200 |
| Total | 3,600 | 3,700 |

Algonquin contends that by reason of the extensive litigation, beginning in 1950, between it and Northeastern Gas Transmission Company, Tennessee's predecessor subsidiary, a division of the market between the two pipelines was, in effect, achieved and tacitly recognized by the Commission.[3] Predicated upon this belief is Algonquin's theory that a certain amount of duplication and paralleling of facilities necessarily follows and, therefore, must be condoned because the situation was created by the Commission. Staff objection to Algonquin's proposed lateral, principally because it would extend near Tennessee's 16-inch pipeline, is characterized by Algonquin's counsel as "unsound, unfair and, under the conditions prevailing in the New England area, against the public interest, as well as contrary to the regulatory philosophy behind the creation of Algonquin and Tennessee."

As a result of the close proximity of Algonquin's and Tennessee's facilities in the New England area, a number of instances have occurred where one pipeline serving a distributor finds, due to the distributor's acquisition of newly enfranchised territory, that service from the other pipeline would be more economical. Such situations have frequently resulted in "swap-outs," or exchange agreements that allow the closest supplier to deliver increments of gas for the account of the other pipeline without taking on the distributor as its own customer and without bestowing upon the distributor the benefit of a rate differential if one should happen to exist.

There are apparently five "delivery-for-the-account-of" agreements by Tennessee for Algonquin and two by Algonquin for Tennessee. Ostensibly, the failure of Algonquin to negotiate another exchange agreement with Tennessee for the delivery of gas to Hartford at Bloomfield for the account of Algonquin prompted it to file the application that is the subject of the present litigation.

Algonquin directly challenges the constitutionality of the Commission's Show Cause Order of February 16, 1966, and alleges that the agency is completely devoid of authority under Section 7(a) of the Natural Gas Act to require upon its own motion the permanent connection of a pipeline company with a distributor. Counsel for Algonquin, in support of his allegation, points out that both Tennessee and Hartford are unequivocal in denying that their participation in the present proceeding is in the capacity of 7(a) applicants, but, on the contrary, that their attendance is only as a result of the Commission's specific direction. Counsel also cites, apparently as evidence of a lack of self-assurance or conviction upon the Commission's part, a number of its annual reports to Congress wherein the Commission has requested the enactment of legislation empowering it "to require natural gas companies to interconnect their facilities with others engaged in the sale and distribution of natural gas and to sell or exchange gas with such persons together with authority to prescribe the terms, arrangements and conditions for such interconnections and the compensation payable therefor." Counsel further observes, in emphasizing his point, that such authority is sought only for *emergency* connections and not for a *permanent* junction such as is obviously contemplated in the instant case. A further reference is made to the 1964 Annual Report wherein it is stated:

> Section 7(a) now gives the Commission limited authority to direct a natural gas company to interconnect with and sell gas to a local distributing company, but is silent on interconnection of the pipeline systems themselves.

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[3] Tennessee Gas Transmission Co., *et al.*, Docket No. G–1248, *et al.*, 9 FPC 262; United Gas Pipe Line Co., *et al.*, Docket No. G–1447, *et al.*, 10 FPC 35; Northeastern Gas Transmission Co., *et al.*, Docket No. G–1568, *et al.*, 10 FPC 36; Algonquin Gas Transmission Company, *et al.*, Docket No. G–1319, *et al.*, 12 FPC 209

Counsel for Algonquin, while apparently conceding that the Commission has some authority under Section 7(a) of the Natural Gas Act to direct an interconnection between a pipeline and a distributor, nevertheless maintains "that the Commission's authority is so limited that it does not extend to forcing upon a pipeline company a Section 7(a) proceeding when none has been requested by anyone and where the act of the Commission is upon its own initiative."

### *Hartford's Position*

Following the Commission's issuance of the Order to Show Cause on February 16, 1966, Hartford revised its gas supply requirements to delineate its proposed purchases with Algonquin as the sole supplier and with a dual supply furnished by Algonquin and Tennessee. The Hartford requirements sought from Tennessee are as follows:

| Commencing | Rate Schedule CD-6 Maximum Contract Quantity (Mcf) | Rate Schedule LNG | |
|---|---|---|---|
| | | Daily Quantity (Mcf) | Winter Quantity (Mcf) |
| Nov. 1, 1966, a total of | 3,162 | | |
| Oct. 1, 1967, a total of | | 4,386 | 30,600 |
| Nov. 1, 1967, a total of | 3,264 | | |
| Oct. 1, 1968, a total of | | 6,732 | 46,920 |
| Nov. 1, 1968, until Nov. 1, 1988, a total of | 4,896 | | |
| Oct. 1, 1969, until Oct. 1, 1989, a total of | | 9,282 | 52,020 |

The possibility of obtaining part of its revised requirements from Tennessee is particularly attractive to Hartford because of the potentially great savings in purchased gas costs involved in such an attachment.

In addition to its present pipeline source of gas, Hartford owns and operates a propane vapor plant and has purchased the necessary land for a contemplated liquified natural gas storage plant.

The availability of LNG pipeline service from Tennessee will save Hartford and its customers some $685,000 over a five-year period as compared with service from Algonquin coupled with the cost of LNG plant operation. Hartford maintains that attaching an additional source of supply will simplify future discussions with its supplier for supplemental volumes and will avoid the investment of some $1,160,000 dollars in a liquified natural gas plant, an investment which must be constantly implemented with load growth.

It is Hartford's position that the resulting savings from a dual source of supply will be passed on to its consumers and that Algonquin, as shown by Exhibit No. 17, will be assured of the revenues projected in its original and amended applications without the necessity of having to spend $2,887,000 for an uneconomical undertaking such as the proposed lateral.

### *Position of the State of Connecticut Public Utilities Commission*

The State Commission is cognizant of the fact that the Algonquin lateral will cost $2,887,000 and that such sum will eventually be included in the computation of the cost of service for the pipeline. The State Commission is also concerned that despite this expenditure. Algonquin cannot render LNG service to Hartford and the latter company would have to undertake the construction of its own plant at an initial investment cost of $1,160,000, and total annual operating cost of $200,000 which would be paid for by Hartford's consumers.

Service by Tennessee, on the other hand, would obviate the necessity for Hartford's building a LNG plant and eliminate the expenditure by Algonquin for a duplicate facility.

The State Commission urges, therefore, the certification and physical connection of Tennessee with Hartford and that the former be directed to sell both contract demand and LNG volumes in the necessary amounts on its applicable and effective tariffs to Hartford for use in its distribution system.

### *Tennessee's Position*

Tennessee states that it adopts no affirmative position in this proceeding and that its presence is solely by direction of the Commission pursuant to the Show Cause Order of February 16, 1966.

Tennessee's sales manager testified at length that in compliance with such order he contacted Hartford and ascertained the amounts of gas it desired to purchase, under what rate schedules and where deliveries were to be made.

Tennessee in the light of such information, concluded that the volumes of gas desired by Hartford could be delivered from currently unallocated capacity in the New England area without jeopardizing service to its existing customers and, since the delivery points at Farmington and Bloomfield are traversed by its 16-inch line, interconnection with Hartford would only require the installation of metering facilities at a nominal cost.

Tennessee also relates that it stands ready to commence LNG service to Hartford on October 1, 1967, the scheduled completion date of the latter's plant.

### *Staff Counsel's Position*

Staff vigorously opposes Algonquin's amended application for multiplicity of reasons including infeasibility, the apparent lack of competition between Algonquin and Tennessee, the paralleling and duplication of existing facilities and the concomitant hardships which would be imposed upon the rate-paying public.

Staff counsel has presented a detailed review of the development and certification by the Commission of natural gas pipeline service in the New England area. Taking issue with Algonquin's position, he maintains that the Commission did not make an immutable allocation of customers based upon some geographical delineation, but rather a division of immediately forseeable requirements designed to maintain the economic feasibility of both supplier's projects through the use of the respective distributors' fifth-year requirements with a minimum duplication of facilities.

The suppliers, however, as alleged by Staff counsel, have operated in the New England area as though "endowed with a legal usufruct both as to the original fifth-year requirements and all future requirements of the respective distributors each was initially authorized to serve--." The subsequent dealings of Algonquin and Tennessee in the area are considered by Staff counsel to be "enmeshed in a set of circumstances, unravelled on cross-examination, which raises an overwhelming suspicion of collusion."

The five "delivery-for-the-account-of" agreements executed between 1955 and 1965 by Tennessee and Algonquin and authorized by the Commission, are regarded with particular suspicion because of three common factors:

(1) The distributor customer was not a party to the filing.

(2) Each filing contains a recitation that the authorization sought therein is in the public interest since it will result in construction cost savings, in most instances, to the distributor.

(3) There is an absence of any reference to the relative rates of the two pipeline companies.

Staff counsel challenges Algonquin's assertion that the proposed North Bloomfield lateral would be of great benefit to its system by backfeeding and supplying additional capacity on the Southington-Farmington lateral, and further charges that the Southington-Farmington lateral was constructed without the requisite Commission authorization.

### *Discussion of the Issues*

Without resorting to a repetitious review of the lengthy litigation preceding the present situation with respect to the development of natural gas service in the New England area, the Examiner is inclined to espouse the opinion as expressed by Staff counsel, namely: that the Commission did not and does not intend to create spheres of influence in New England upon a geographical basis as between pipelines. Regardless of the fact that exchange agreements or swap-outs have been approved by the Commission that benefit one or the other supplier and appear to lend some credence to Algonquin's territorial theory, it is inconceivable that such an end result was intended. Exchange agreements as in the instant case, for example, can rebound to the distinct disadvantage of the consumer because Tennessee's rates are substantially lower than Algonquin's. Therefore, the circumstances surrounding each individual agreement must be carefully examined in order to protect the public interest.

While some duplication of facilities, was, of course, inevitable in resolving the original certification dilemma, there is little justification for a belief that the Commission will permit such an uneconomical practice to continue in perpetuity. On the contrary, the Commission in numerous recent decisions has made it quite clear that competition is a necessary element in its scheme of natural gas regulation (*Chattanooga Gas Company* v. *East Tennessee Natural Gas Company*, Docket No. RP65–3, Opinion No. 494, June 8, 1966, 35 FPC 902).

The propriety of the exchange agreements between Algonquin and Tennessee previously approved by the Commission are not in issue in this proceeding and despite the Staff counsel's collateral attacks upon their validity, and the absence of any evidence to the contrary, it must be assumed that such agreements are in the public interest.

The record, while revealing that competition between Algonquin and Tennessee for the distributor market in the case of Hartford was something less than vigorous, did not produce any probative evidence of collusion or of a conspiracy between the pipelines to stifle competition. Such a charge by Staff counsel must, therefore, fall as unsupported.

The feasibility, however, of Algonquin's proposed lateral to North Bloomfield is not only questionable, but appears to be without any tincture of merit since it is predicated upon revenues associated with volumes of gas *previously certificated* by the Commission on August 24, 1965, for delivery to Hartford through the existing Cromwell and Glastonbury delivery points. This fact is conclusively demonstrated by Algonquin's application in the original proceeding, Exhibit G–II, page 2 (Item "A" by reference in this record).

The Examiner is satisfied that the Commission was acting within the limits of its statutory authority in issuing the Show Cause Order of February 16, 1966, and he rejects Algonquin's argument that the inquiry is limited exclusively to the service to be rendered by Tennessee or Algonquin to Hartford in the North Bloomfield area. This view, in the Examiner's opinion, is unreasonable and if permitted to prevail would defeat by a technicality the very purpose of the show cause order.

Section 7(a) of the Natural Gas Act authorizes the Commission "* * * after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural gas company * * * to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged * * * in the local distribution of natural or artificial gas to the public * * * if the Commission finds that no undue burden will be placed upon such natural gas company thereby: *Provided*, That the Commission shall have no authority to compel * * * such natural gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers. (52 Stat. 824 (1938); 15 U.S.C. Sec. 717 f(a))."

Following the issuance of the show cause order a Tennessee witness, as previously related, contacted Hartford to ascertain the volume of gas it desired to purchase and under what rate schedules. The same witness testified at length during the hearing and stated unequivocally that the volume of gas required by Hartford could be delivered from Tennessee's unallocated pipeline capacity without impairing its ability to render adequate service to its existing customers. For Commission authority to direct such a physical connection, if it places no undue burden on the pipeline and it will not impair the pipeline's ability to render adequate service to its presently attached customers, see *The Manufacturers Light & Heat Co.*, v. *F.P.C.*, 206 F. 2d 404 (CA3-1953) and *Central Illinois Public Service Co.*, v. *F.P.C.*, 338 F. 2d 682 (CA7-1964).

Obviously, the public interest requires that Hartford receive its supplemental gas supply from Tennessee instead of Algonquin since, in the latter case, it would be required to purchase gas at a higher rate and to build a new liquified natural gas plant at an estimated initial cost of $1,160,000. Also, Algonquin would be required to spend almost three million dollars to duplicate Tennessee's existing facilities. On the other hand, the record shows that Tennessee's only expense in serving Hartford would be the installation of two metering facilities at a cost of approximately $52,000. The magnitude of the resulting savings to the rate payers of both Algonquin and Hartford requires the certification of Tennessee to supply Hartford's supplemental requirement.

With respect to Staff counsel's charge that Algonquin's Southington-Farmington lateral was illegally constructed and not exempt under Section 2.55(c) of the Commission Rules, it appears that Algonquin upon the advice of counsel acted in good faith in extending the Southington-Farmington lateral believing it to be exempt under the prevailing rules at the time of construction. This fact coupled with the elapsed time now involved and the relatively insignificant amount of construction does not, in the opinion of the Examiner, warrant the disturbing of such a conclusion and the possible subjection of Algonquin to the general penalties provisions of Sections 20 and 21 of the Natural Gas Act if such issue is to be pursued.

## PROPOSED FINDINGS AND CONCLUSIONS

Upon consideration of the entire record including briefs of counsel, it is found and concluded in addition to all other findings and conclusions contained herein that:

(1) Algonquin and Tennessee are "natural-gas companies" within the meaning of the Natural Gas Act.

(2) The "Motion to Amend" filed by Algonquin in Docket No. CP65-340 must be denied since Algonquin has not sustained its burden of proof that the project is economically feasible—the overwhelming evidence of record requiring a holding to the contrary.

(3) Algonquin's proposed construction of the North Bloomfield lateral is found not to be in the public interest since:

(a) It would be duplicative of facilities authorized in the original proceeding.

(b) It would parallel and duplicate existing facilities of Tennessee which are capable of rendering a service to Hartford more in the public interest.

(4) An order under Section 7(a) of the Act should issue requiring Tennessee to intertie its existing mainline facilities with those of Hartford and to deliver to Hartford volumes of gas consistent with the proposal detailed herebefore. The issuance of such an order is required by the present and future public convenience and necessity.

(5) Tennessee is able and willing to perform the services sought by Hartford as outlined hereinbefore. The rendition of such services to Hartford will not impair Tennessee's ability to adequately serve its other customers.

(6) The proposed service to be rendered by Tennessee to Hartford will not, economically or otherwise, deprive or aggrieve Algonquin. Said service will not affect heretofore authorized sales made by Algonquin to Hartford.

## ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity be and the same is hereby issued, authorizing and directing Tennessee Gas Transmission Company to establish physical connection of its presently existing transportation facilities with the distribution facilities of The Hartford Gas Company and to construct and operate the facilities necessary to transport, sell and deliver natural gas to the same as more fully described in the record herein in Docket No. CP66-263 upon the terms and conditions of this order.

(B) The certificate and order issued by paragraph (A) above and the rights granted thereunder are conditioned upon Tennessee's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions as set out in paragraphs (a), (b) any necessary facilities shall be completed and in actual operation within thirty days from the date hereof, (c)(4), (e) and (f), of Section 157.20 of said Regulations.

(C) The application for a certificate of public convenience and necessity filed by the Algonquin Gas Transmission Company in Docket No. CP65-340 is denied and the proceeding thereunder is terminated and dismissed.

AMES W. WILLIAMS,
*Presiding Examiner.*

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## HENRY FORD AND SON, INCORPORATED, AND NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 13

### ORDER APPROVING TRANSFER OF LICENSE

(Issued June 27, 1967)

On August 30, 1965, Henry Ford and Son, Incorporated (Ford) a New York corporation, and Niagara Mohawk Power Corporation (Niagara Mohawk), a New York corporation, filed a joint application pursuant to Section 8 of the Federal Power Act (Act) seeking authority to transfer the license for the Green Island project, F.P.C. Project No. 13 from the former to the latter. The Green Island project is located on the Hudson River in Albany County, New York at the United States Lock and Dam at Green Island. The license for this project was issued for a period of 50 years with an effective date of March 3, 1921.

Ford represents that it has fully complied with the terms and conditions of its license, as amended, and that it has fully satisfied and discharged all of its liabilities and obligations thereunder to the date hereof and obligates itself to pay all annual charges owing under the license to the date of transfer. Upon Commission approval of the proposed transfer and completion of the conveyance of the properties, Niagara Mohawk agrees to submit to the Commission certified copies of all instruments of conveyance; Ford agrees to deliver and Niagara Mohawk agrees to accept and permanently retain all license instruments and all maps, plans, specifications, contracts, reports of engineers, accounts, books, records, and any other pertinent documents.

Contingent upon final written approval by the Commission of the proposed transfer, Niagara Mohawk accepts all the terms and conditions of the subject license, as amended, and agrees to be bound thereby to the same extent as though it were the original licensee thereunder. These include terms and conditions relative to project net investment and charges for the expropriation of excessive profits to the United States. License Article 1 incorporates by reference *inter alia* the provisions of Sections 3 and 10(e) of the Federal Water Power Act (41 Stat. 1064, 1069).[1]

In passing upon the subject transfer we do not deem it necessary to definitely fix at this time Ford's net investment in Project No. 13 or to enter upon a hearing pursuant to Section 10(e) of the Act and Regulation 18—Expropriation of Excessive Profits, Federal Power Commission Orders, No. 9 Rules and Regulations Approved On and Effective from February 28, 1921[2]. To date the Commission has not determined Ford's net investment in Project No. 13 or its excessive profits, if any. There is presently pending before the Commission a rulemaking proceeding wherein the Commission will determine the principles and procedures to be applied in ascertaining project net investment. Notice of Proposed Rulemaking, Hydroelectric Project Licenses: Calculation of "net investment" Under Section 3(13) of the Federal Power Act, issued January 20, 1966.

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[1] See also Regulation 18—Expropriation of Excessive Profits, Federal Power Commission Orders, No. 9 Rules and Regulations, Approved on and Effective from February 28, 1921.

[2] See also Regulation 17—Amortization Reserves.

The accounts, books and records of Ford associated with Project 13 are to be transferred to and retained by Niagara Mohawk. As the successor to Ford, Niagara Mohawk obligates itself as a condition of the transfer of license to subject itself to all conditions of the license and Act as they now apply to Ford. As noted, these include terms and conditions relative to project net investment and charges for the expropriation of excessive profits to the United States.

In affording this consideration of these questions we have reviewed available office data bearing upon Ford's operations and the magnitude of its earnings and profits. These data do not indicate that Ford has experienced excessive profits. Should Ford or Niagara Mohawk consider it desirable from their respective standpoints to have a formal hearing and ruling upon that question prior to acceptance of the transfer of license the Commission will entertain an application therefor.

The office data thus reviewed include Ford's reported project capital costs, accumulated provision for depreciation, operating revenues, expenses, and allowances for return and taxes, including Federal income taxes, all in calculating Ford's realized return on invested capital.

Ford, as a wholly-owned subsidiary of Ford Motor Company, supplied a portion of the physical output of its electric facilities to the parent for use in the latter's manufacturing operations, furnished a portion to the United States free of charge and sold a portion to a utility for resale. The licensee's capital and operating expense needs were supplied by the parent company. In reporting to this Commission, Ford has calculated project revenues as including an allowance for return. Ford's revenues from sales of project output for utility resale purposes are as reported to this Commission.

Additionally, we have examined Ford's possible alternative power costs as compared to its expenditures in constructing and operating Project No. 13. This comparison leads us to conclude that such costs are substantially comparable over the period of project operation, 1923 through 1960.[3]

Commission authorization of the acquisition of the project facilities by Niagara Mohawk has been granted by our order of even issuance date in Docket No. E-7260, *infra*, p. 1176.

*The Commission finds:*

(1) Public notice of the filing of this application has been given and no protests or petitions to intervene have been received.

(2) Niagara Mohawk, the proposed transferee, is a corporation organized under the laws of the State of New York, is domesticated in the State of New York and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws as necessary for the operation of Project No. 13.

(3) Approval of transfer, upon compliance with the conditions set forth herein, of the license for the project to the proposed transferee will not be inconsistent with the public interest.

*The Commission orders:*

(A) The transfer of the license for Project No. 13 from Henry Ford and Son, Incorporated to Niagara Mohawk Power Corporation is hereby approved, effective as of the effective date of the acquisition of the project by Niagara Mohawk, subject to Section 9.3 of the Commission's Regulations under the Federal Power Act, and subject to the further condition that the net investment in the project shall not be increased on account of the transfer: *Provided, That,* the transferee shall be subject to the conditions and obligations of the license and to all of the provisions of the Act to the same extent as though it were the original licensee for the project.

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[3] See Regulation 18, Section 4, February 28, 1921; Notice of Proposed Rulemaking Hydroelectric Project Licenses: Calculation of "Net Investment" Under Section 3(13) of the Federal Power Act, issued January 20, 1966, p. 4 (31 F.R. 1079).

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Federal Power Act, and failure to file such an application shall constitute acceptance of the license for Project No. 13 by Niagara Mohawk. In acknowledgment of the acceptance of such license, this instrument shall be executed in triplicate on behalf of Niagara Mohawk Power Corporation and shall be returned to the Commission within 60 days from the date of issuance of this order accompanied by a certificated copy of the deed of conveyance or other instrument evidencing transfer of the property under license, together with evidence of the recording thereof.

Commissioner Ross *dissenting.*

Ross, *Commissioner dissenting:*

Despite what might be considered a fairly successful and well-written statute, the Federal Power Act has always contained certain difficult areas for the Commission to implement. Two such provisions have been Section 3(13), dealing with net investment, and Sections 10(d) and 10(e), dealing with excess earnings and excessive profits, respectively.

Presently, the Commission has outstanding a proposed Rule in Docket No. R–297 which seeks to clarify net investment as set out in Section 3(13) of the Act and the relationship of 10(d) thereto. However, somehow during the years, Section 10(e) has never really surfaced except in the earlier years when it was the subject of various rules and regulations which were incorporated into several licenses issued after the enactment of the Federal Power Act; to date, no definitive application of this section has been made by any Commission in a proceeding.

Section 10(e) of the Federal Power Act provides for the expropriation to the Government of excessive profits until the States had made provisions for preventing such excessive profits or until the period of amortization provided in Section 10(d) was established. As such, a separate proceeding, not necessarily related to a final accounting at the termination of the license period, was envisioned.

Accordingly, Regulation 18 was adopted by the Commission on February 28, 1921, and provided for the expropriation of excessive profits, after a hearing, from industrial licensees and public utility licensees in states without any regulation. Where a state had created an agency and authorized it to regulate rates for power "developed, transmitted, or distributed within such state by public service or other corporations, or by persons or associations, for sale and use of public service," it was presumed that the state had made provision for preventing any excessive profits in accordance with the statute.

Section 4 of Regulation 18, dealing with industrial licenses provided that "the Commission may determine the fair value of the power so used and from such value determine the profits of such licensee and whether and to what degree such profits so determined are excessive and may require the licensee to pay to the United States any and all such excessive profits." The fair value of power ascribed to the industrial licensee for these purposes was not to exceed the price at which the licensee could obtain an alternate source of power.

In June of 1921, Regulation 18 was amended in several ways, one amendment being a proviso that the amounts to be paid by *industrial* licensees under Section 10(e) was not to exceed "the amounts which would be paid into amortization reserves * * * were such regulation applicable to the projects and properties named in Section 1 hereof."

Although Regulation 18 did not define excessive profits the Commission's first annual report for the fiscal year ending June 30, 1921, construed 10(e), or excessive profits, as profits which were "so unreasonable or extortionate that the drastic procedure of expropriation is justified." Contrary to the policy expressed in Regulation 18, the Commission seemed to view its 10(e) responsibilities for public utilities in states without regulation as one of reducing the rates charged by such public utilities so that "excessive profits will not be earned rather than to collect such profits as charged to be paid into the Federal Treasury."[1] With regard to the private industrial licensees, however, the Commission assumed that it would expropriate these as provided for in the Act.

A review of the history of Section 10(e) clearly shows that the early Commissions were well aware of the existence of the section; however, for various reasons, no Commission has ever clarified the role of Section 10(e) in any proceeding. The fact of the matter is, the present case presents an ideal opportunity for the Commission to set straight the confusing history of Section 10(e). More than that, under the terms of the transfer the majority is approving here, Niagara Mohawk, a public utility company, will have to assume all the liabilities of the Ford Company, an industrial licensee, including its Section 10(e) obligations, if any. There has been no formal proceeding to determine the extent of Ford's obligations under 10(e). The majority has made no findings and sets forth no figures or rationale to support its conclusion that there are no Section 10(e) liabilities in this case.

Rough calculations I have made on the data available not only to me but to the majority indicates that the alternative cost of power to the licensee Ford over the first 20 years of the license ranged from 19 mills to 9 mills per kilowatt hour. Ford's costs, however, ranged anywhere from an alleged 5 mills to the 10 mills it reported to the Commission. The difference between costs and alternate power represents sizable amounts of money. A difference of one mill per kilowatt hour between the licensee's "costs" and alternate power over the first 20 years of the license from the project would amount to over $450,000. Whether any of the amounts that properly could be attributed to Ford would be found to be excessive profits, I don't know. However, I feel it is the duty of the Commission to set out clearly the way in which it found no excessive profits so the industry may be aware of possible liabilities with regard to Section 10(e). To do otherwise would be to defeat the aims of the legislators of the Power Act who sought to develop the Nation's water resources by protecting the financial integrity of hydro projects yet at the same time to see that the people as a whole would be the beneficiaries of the Nation's water resources. To enable licensees to assume they have no liabilities because of prior inaction by the Commission is misleading; yet the Commission cannot avoid its duties under the Act or vitiate what Congress intended. Sooner or later the Commission must decide. The effect of the majority's decision in this case, in effect, is a side-stepping of an issue that should no longer be ignored. Because the public will be the direct recipient of any excessive profits under Section 10(e) and because those licensed by the Commission have a right to be apprised of their potential liability under Section 10(e), I would set the matter of Section 10(e) profits for Green Island for hearing.

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[1] First annual report of the Federal Power Commission, p. 62.

As to excess earnings under Section 10(d) of the Act, I feel that the resolution of R-297 should be determinative of the ultimate obligations of the licensee. Settling that matter in this proceeding seems to me to predetermine the issues presented by that rulemaking and could possibly jeopardize the economic feasibility of the transfer from Ford to Niagara Mohawk.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## NIAGARA MOHAWK POWER CORPORATION, DOCKET NO. E-7260

### ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued June 27, 1967)

Niagara Mohawk Power Corporation (Niagara Mohawk), filed an application on November 26, 1965, pursuant to Section 203 of the Federal Power Act seeking authority to acquire from Henry Ford and Son, Incorporated (Ford) the Green Island Hydro Electric project licensed as F.P.C. Project No. 13.

Niagara Mohawk is incorporated under the laws of the State of New York and qualified to do business in that state with its principal place of business at Syracuse, New York and is engaged primarily in the business of generating, purchasing, transmitting, selling and distributing electric energy in Upstate New York.

Ford is incorporated under the laws of the State of New York and qualified to do business in that state and it is a fully-owned subsidiary of the Ford Motor Company and operated Project No. 13 to provide power for the manufacturing facilities of the parent company located near the project.

The Green Island project which Niagara Mohawk proposes to acquire is located on the Hudson River in Albany County, New York, and was licensed by the Federal Power Commission in 1921. The installed capacity of the project is approximately 8,000 horsepower and consists of four 2,000 horsepower hydraulic turbines each of which drives a 1000 kw D.C. generator and an 800 kva A.C. generator. Niagara Mohawk proposes to acquire these facilities for a cash consideration of $100,000. As of December 31, 1965, the facilities had an original cost of $1,818,045.00 and had an accumulated provision for depreciation of $1,277,750.44. Ford has made changes in its manufacturing operations that have eliminated the need for the Green Island project and it has not operated since November 30, 1960. While the project in its present condition is not usable by Niagara Mohawk, it does constitute a convenient hydroelectric development of the type which would economically fit in with Niagara Mohawk's electric needs. After the acquisition Niagara Mohawk plans to apply for an amendment of the license, involving expenditures of about $396,000, to modify the plant in order to restore it to operation. Niagara Mohawk estimates that after rehabilitation the plant will have a net capacity of 5,600 kw and that it will be obtaining this new capacity at a cost of approximately $88.00 per kilowatt. It recognizes, of course, that the license for the project expires in 1971 and is subject to recapture, or relicensing to it or a new licensee, after that date. This fact, however, would not interfere with appropriate capital expenditures to rehabilitate the project to meet the needs of Niagara Mohawk and to make the project compatible with the standards of Section 10(a) of the Act, since under the statutory scheme such expenditures would be added to the net investment of the project.

Niagara Mohawk shall record the acquisition in accordance with Electric Plant Instruction 5 of the Uniform System of Accounts. Paragraph C of Plant Instruction 5 requires that the cost of rehabilitation be accounted for as part of the purchase price. If, after giving effect to the cost of rehabilitation, a credit acquisition adjustment results, the amount shall be credited to Account 108, Accumulated Provision for Depreciation of Electric Plant in Service. If a debit acquisition adjustment results, the amount shall be charged to Account 435, Miscellaneous Debits to Surplus. Niagara Mohawk shall file proposed journal entries to clear Account 102, Electric Plant Purchased or Sold, after all rehabilitation costs have been recorded therein.

In a separate order issued concurrently herewith, *Henry Ford and Son, Incorporated and Niagara Mohawk Power Corporation*, Project No. 13, *supra*, p. 1172, the transfer of the license for this hydroelectric facility from Ford to Niagara Mohawk is approved.

Written notice of the application has been given to the New York Public Service Commission and the Governor of that State. Notice has also been given by publication in the Federal Register on December 9, 1965 (30 F.R. 15241), stating that any person desiring to be heard or to make any protest with reference to the application, should file petitions or protests on or before December 20, 1965, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

*The Commission finds:*

(1) Niagara Mohawk, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 25, 1961, *Niagara Mohawk Power Corporation*, Docket No. E-6990 (25 FPC 1025).

(2) By the proposed transaction, Niagara Mohawk will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Ford, another person within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed merger of the facilities of Ford with those of Niagara Mohawk, as described above, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

*The Commission orders:*

(A) The proposed merger of the facilities of Ford with those of Niagara Mohawk, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Niagara Mohawk shall record the proposed transaction herein authorized as provided above.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days of the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, extensions or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Commissioner Ross *dissenting* for reasons set forth in his dissent in Project No. 13, Henry Ford and Son, Incorporated, *et al.*, issued June 27, 1967 *supra*, at p. 1174.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED NATURAL GAS COMPANY AND IROQUOIS GAS CORPORATION, DOCKET NO. CP66-349 AND TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., DOCKET NO. CP66-420

### ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 27, 1967)

On April 12, 1967, United Natural Gas Company (United) and Iroquois Gas Corporation (Iroquois) filed in Docket No. CP66-349 a petition to amend the order issued by the Commission August 31, 1966, 36 FPC 566, by extending the time in which the facilities authorized may be completed from January 1, 1968, to January 1, 1969, all as more fully set forth in the petition to amend which is on file with the Commission. United and Iroquois request the extension of time for the completion of the authorized facilities in order to enable them to study the possibility of purchasing an existing pipeline instead of constructing the proposed pipeline.

On April 3, 1967, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), filed in Docket No. CP66-420 a petition to amend the order issued by the Commission August 31, 1966, by authorizing Tennessee to deliver additional volumes of natural gas to Iroquois for an additional calendar year, 1968, all as more fully set forth in its petition to amend.

Tennessee is presently authorized to transport and deliver quantities of natural gas to Iroquois for use in its Buffalo-Niagara Falls distribution area for a period of one year commencing January 1, 1967, pending the construction of natural gas facilities authorized in Docket No. CP66-349 by which Iroquois would be able to purchase natural gas from United at the New York-Pennsylvania state line and transport said gas to Iroquois' Buffalo load center. Due to the delay in construction, Iroquois has requested Tennessee to transport natural gas for it during the calendar year 1968. Tennessee will transport said gas during the months of January, February, March, April, November and December 1968. Due to Iroquois' increased customer requirements for the year

1968, it requests a greater peak day volume and maximum annual quantity than authorized for 1967. The rendition of this service will not result in a material change in Tennessee's average cost of service and will not require any additional facilities. The maximum daily and maximum annual quantities of natural gas requested by Iroquois are 90,000 Mcf and 8,580,000 Mcf, respectively, and the parties have agreed on a fixed annual transportation charge of $418,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the petitions to amend has been received.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 31, 1966, in Docket Nos. CP66-349 and CP66-420 should be amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued on August 31, 1966, in Docket Nos. CP66-349 and CP66-420 is amended by extending the time in which the facilities authorized therein shall be completed from January 1, 1968, to January 1, 1969, and by authorizing Tennessee to deliver additional volumes of natural gas to Iroquois for an additional year, 1968. In all other respects said order shall remain in full force and effect.

(B) Tennessee shall make an appropriate rate filing covering the service authorized.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CONSOLIDATED GAS SUPPLY CORPORATION, DOCKET NO. CP67-328

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 28, 1967)

On May 5, 1967, Consolidated Gas Supply Corporation (Applicant) filed in Docket No. CP67-328 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to establish a new delivery point for the sale and delivery of additional volumes of natural gas to the New York State Electric & Gas Corporation (New York Gas), an existing customer, for resale and distribution in the Town of Newfield and environs, Tompkins County, New York, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate a tap on its 30-inch Line No. 1 and 20-inch Line No. 31 in the Town of Newfield and to construct a measuring and regulating station for the sale and delivery of natural gas to New York Gas at the connection of Lines Nos. 1 and 31 with facilities to be constructed by New York Gas.

New York Gas has executed a new service agreement with Applicant dated April 25, 1967, which includes the delivery of gas at the proposed Newfield connection.

The total estimated annual and peak day natural gas requirements of the Town of Newfield in the third year of proposed operations are 38,000 Mcf and 438 Mcf, respectively.

On July 13, 1966, New York Gas received a franchise from the Town of Newfield authorizing the aforementioned natural gas distribution service and on December 6, 1966, the New York Public Service Commission approved said franchise.

The proposed natural gas service to New York Gas will be rendered by Applicant pursuant to its existing FPC Rate Schedule CR-5 which provides for a rate of 44.4 cents per Mcf during a 36-month development period and 49.33 cents per Mcf thereafter.

The total estimated cost of Applicant's proposed project is $10,150, which cost will be financed from funds on hand.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

At a hearing held on June 22, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Consolidated Gas Supply Corporation, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 26, 1942, in Docket No. G-100 (3 FPC 151).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(6) The certificate hereinafter issued should be conditioned upon Applicant's filing with the Commission an appropriate revised service agreement with New York Electric & Gas Corporation in accordance with the Commission's Regulations under the Natural Gas Act.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Consolidated Gas Supply Corporation, to construct and operate the proposed facilities for the transportation and sale of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act by January 1, 1968.

(D) The certificate issued by paragraph (A) above is conditioned upon Applicant's filing with the Commission an appropriate revised service agreement with the New York Electric & Gas Corporation in accordance with the Commission's Regulations under the Natural Gas Act.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## EAST TENNESSEE NATURAL GAS COMPANY

### ORDER ALLOWING SUPERSEDING SERVICE AGREEMENT TO TAKE EFFECT

(Issued June 28, 1967)

East Tennessee Natural Gas Company (East Tennessee) filed a revised Exhibit A to its service agreement with Colonial Natural Gas Company (Colonial) dated December 1, 1966, which reflects a reduction in Colonial's contract demand from 9,400 Mcf per day to 5,000 Mcf per day beginning December 1, 1966. By letter-order issued February 3, 1967, the Commission accepted the filing with the condition that East Tennessee in future rate proceedings include "revenues derived from sales to Colonial Natural Gas Company based upon volumes utilized by the Commission in prescribing rates for East Tennessee in Opinion No. 488, 35 FPC 534, or actual volumes sold whichever are larger."

East Tennessee by letter dated February 16, 1967, informed the Commission that it was unable to accept the condition and in the alternative suggested the following: "If, in the future, all or any portion of the years 1967 through 1970 are included in any test year in a rate proceeding involving East Tennessee, the volumes of gas delivered off the Virginia extension to be utilized by the Commission in prescribing rates for East Tennessee shall not be less than the volumes of gas set forth by the Commission in Opinion No. 488." The Knoxville Utilities Board, *et al.*, by letter dated February 25, 1967, protested the language proposed by East Tennessee, stating that (1) by specifying volumes of gas delivered rather than revenues East Tennessee would appear to be allocating its actual costs based on jurisdictional volumes including the volumes for Colonial set out in Opinion No. 488, (2) by not computing revenues and expenses on the same Colonial volumes East Tennessee would shift costs to jurisdictional customers from non-jurisdictional customers, (3) by limiting the condition to volumes of gas delivered off the Virginia extension rather than sales to Colonial only, East Tennessee is attempting to utilize the expected growth in sales to Roanoke to offset the subsidy to Colonial and further, (4) by limiting the condition to only the calendar years 1967 through 1970 East Tennessee would attain an effective moratorium from any rate review until at least well into 1968.

To evaluate the validity of Knoxville's contention it is necessary to review briefly the history of the Virginia extension and its impact on East Tennessee's rates. These facilities were certificated in Docket No. CP64-21 as set out in Opinion No. 435, 32 FPC 158. There the Commission authorized East Tennessee to construct and operate a 138-mile pipeline extending from Bristol, Virginia-Tennessee to the City of Roanoke, Virginia. By means of these facilities, East Tennessee was authorized to sell natural gas to Roanoke Gas Company in the amount of up to 7,700 Mcf per day and to Colonial up to 17,800 Mcf per day, their third year requirements. Knoxville intervened in these proceedings neither endorsing nor opposing the project, but seeking to assure that the costs attributable to the new service in Virginia are not collected from the customers in Tennessee. The Commission in its Opinion No. 435 adopted this principle and ordered East Tennessee to file with this Commission each year for five years after the commencement of operations a report of all of its direct costs and expenses of the new service and the revenues resulting therefrom and to furnish these data to resale customers upon request. From the beginning of Colonial's operations its purchase from East Tennessee lagged behind that which had been anticipated in Opinion No. 435 and Colonial has not yet developed its distribution system to the extent that was anticipated. Full realization of Colonial's project is now anticipated in 1970.

The facilities authorized resulted in the development of a new rate zone on the East Tennessee system. In that zone (Zone 3), as in all others, it would be inappropriate to develop allocation factors based upon individual customer volumes rather than the aggregate volumes sold in the zone. Allocation factors would and should be appropriately based upon total jurisdictional volumes in the zone, not volumes delivered to any individual customers. Further, the Commission historically has used annual and peak day sales volumes in the development of allocation factors. Therefore, the deletion of the term "revenues" from the original condition will have no adverse effect upon Knoxville. To hold East Tennessee to the development of allocation factors based upon the specific volume to any one customer within any one zone would create undue discrimination. For this reason, we believe it is appropriate to adopt the phraseology proposed by East Tennessee. Thus costs would be allocated to the new zone based on the estimated third year volumes set out in Opinion No. 488 and the failure of that zone to return revenues equal to that allocated cost would be borne by East Tennessee. However, at such time that the volumes purchased by all the customers in the new zone exceed the third year estimates in Opinion No. 488, East Tennessee and all customers on its system would benefit. Knoxville's proposal would require that all benefits of growth in Roanoke's requirements redound to the benefit of the customers in the other zones while East Tennessee alone bears the total burden of Colonial's failure to purchase the volumes estimated in Opinion No. 488. We believe that East Tennessee's suggested condition preserves the integrity of Opinion Nos. 435 and 488 and provides the assurance to Knoxville that it would not be saddled with the costs attributable to the new service in Virginia which was certificated in Docket No. CP64-21. To assure such preservation, however, it would appear that Knoxville has appropriately suggested that the time factor which may be utilized in the test year should be enlarged. For that reason we shall include the year 1966 in the rate condition hereinafter set out.

*The Commission finds:*

Good cause has been shown that the 30 day notice requirement provided in the Commission's Regulations under the Natural Gas Act be waived with respect to the proposed superseding service agreement applicable to the sales of natural gas by East Tennessee to Colonial, and that such service agreement be allowed to take effect as of December 1, 1966.

*The Commission orders:*

(A) The 30-day notice requirement provided in the Commission's Regulations under the Natural Gas Act is hereby waived with respect to the revised Exhibit A filed December 1, 1966, to its service agreement applicable to the sales of natural gas by East Tennessee to Colonial and that service agreement as revised is hereby allowed to be effective as of December 1, 1966, subject to the following conditions.

(B) The foregoing acceptance is subject to the condition that in the future, in event all or any portion of the years 1966 through 1970 are included in any test year in a rate proceeding involving East Tennessee, the volumes of gas delivered off the Virginia extension to be utilized by the Commission in prescribing rates for East Tennessee shall be not less than the volumes of gas set forth by the Commission in Opinion No. 488.

(C) The letter-order issued February 3, 1967, with respect to that service agreement is hereby vacated.

(D) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act, nor shall it be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, or practice affecting such service or rate; nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate.

(E) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted by or against East Tennessee.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## THE MANUFACTURERS LIGHT AND HEAT COMPANY, DOCKET NO. CP67-262

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 28, 1967)

On March 13, 1967, as supplemented on May 11, 1967, The Manufacturers Light and Heat Company (Applicant), filed in Docket No. CP67-262 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain natural gas facilities, during the calendar years 1967 and 1968, to assure continued dependable service to existing markets in Pennsylvania and West Virginia and provide for normal growth of these markets as well as to make more efficient use of its facilities, all as more fully set forth in the application as supplemented.

Applicant seeks authorization for the following projects in 1967 and 1968:

(1) abandon and remove 7.11 miles of 8-inch pipeline and replace with 7.15 miles of 10-inch pipeline in Beaver County, Pennsylvania.

(2) abandon and remove 7.86 miles of 10-inch pipeline and replace with 8.50 miles of 12-inch pipeline in Lawrence and Butler Counties, Pennsylvania, and

(3) construct 0.89 miles of 6-inch pipeline and 0.16 miles of 2-inch pipeline.

(4) abandon 5.70 miles of 6-inch pipeline and 1.05 miles of 4-inch and 6-inch pipeline in Wetzel County, West Virginia.

The total estimated cost of Applicant's proposed construction is $682,000, which cost will be financed through the issuance and sale of promissory notes or common stock to Applicant's parent company, The Columbia Gas System, Inc.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 22, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and supplement thereto submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, The Manufacturers Light and Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G-593, *et al.* (4 FPC 821).

(2) The facilities proposed to be abandoned by Applicant as hereinbefore described and as more fully described in the application are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (c) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities by Applicant is permitted by the public convenience and necessity and permission and approval thereof should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities by Applicant as hereinbefore described and as more fully described in the application will be used in the transportation of natural gas in interstate commerce and are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder .

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application are granted.

(B) A certificate of public convenience and necessity is issued to Applicant, authorizing the construction and operation of facilities as hereinbefore described, all as more fully described in the application and supplement thereto.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities authorized shall be completed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations by October 1, 1968.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## PACIFIC GAS AND ELECTRIC COMPANY, PROJECT NO. 187

### ORDER MODIFYING LICENSE EXHIBIT H

(Issued June 28, 1967)

On March 8, 1967, Pacific Gas and Electric Company, licensee for Bullards Bar Project No. 187, filed an application for modification of Exhibit H of the license by adding thereto a notation appearing on a print of Exhibit H filed with the application.

Exhibit H is a location map which shows the location of the Bullards Bar Project. It was approved as part of the license for Project No. 187 to serve in lieu of Exhibit J. Exhibit H, however, indicates project boundaries for hydroelectric developments in addition to the Bullards Bar Project authorized in the license. Such other project boundaries, which embrace both Government and private lands, are not necessary for and are not utilized by the Bullards Bar Project. The licensed Bullards Bar Project utilizes the lands shown on license maps, Exhibits K-1-a and K-2-b, FPC Nos. 187-30 and -30) and provided the basis for assessing annual charges under the license for the occupancy of Government lands by the project.

In the above circumstances, the licensee requests that a notation be made on license Exhibit H for the purpose of indicating that the only lands presently being utilized by the project are those shown on the license Exhibit K maps.

*The Commission finds:*

It is appropriate in administering Part I of the Federal Power Act to modify license Exhibit H in the manner requested by the licensee for Project No. 187, and the Exhibit H with the notation thereon should be approved as part of the license for the project.

*The Commission orders:*

(A) Exhibit H (FPC No. 187–12) of the license for Project No. 187 is hereby modified by adding to the bottom thereof the following notation, and as so modified is hereby approved as part of the license for Project No. 187:

> Pursuant to licensee's letter dated March 6, 1967 [filed March 8, 1967] the project boundary is hereby clarified and confined to the area utilized by the project as depicted on approved [license] maps, Exhibits K-1-a and K-2-b (FPC Nos. 187–30 and–31).

(B) The lands not depicted on the Exhibit K maps mentioned in paragraph (A) above are hereby excluded from the license for the project.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## CITY OF PETERSBURG, ALASKA, PROJECT NO. 2521

### ORDER EXTENDING PERIOD OF PRELIMINARY PERMIT

(Issued June 28, 1967)

Application was filed on April 5, 1967 by the City of Petersburg, Alaska, permittee of the proposed Thomas Bay Project No. 2521, for a one-year extension of the period of the permit. The permit was issued for a period of two years, effective as of September 1, 1965.

The permittee advises that the extension of the period of the permit as applied for is desirable to complete its studies and file an application for a license.

*The Commission finds:*

It is appropriate for the purposes of the Federal Power Act to grant the requested extension of the period of the permit.

*The Commission orders:*

The period of the permit for proposed Project No. 2521 is hereby extended through August 31, 1968.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP67-322

### FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued June 28, 1967)

On May 1, 1967, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP67-322 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a 200 horsepower skid-mounted booster station designated as No. 31, together with appurtenant meter station, located in the San Miguel Creek Field, McMullen County, Texas, all as more fully set forth in the application.

The facilities were installed pursuant to a "budget-type" certificate covering field booster compressor facilities and appurtenant equipment issued April 27, 1962 in Applicant's Docket No. CP62-103, 27 FPC 853.

The facilities presently serve as a means of taking into Applicant's system "flash vapor" natural gas purchased from Humble Oil & Refining Company (Humble), Sinclair Oil & Gas Company (Sinclair), Atlantic Richfield Company (Atlantic) and Forest Oil Corporation (Forest). As a result of realignment of production and processing facilities within the field, Humble now desires to process these flash vapors and has agreed to compress all processed volumes prior to the entry of the gas into Applicant's system. Thus, Applicant no longer requires the facilities for the purpose for which they were installed, and Humble has agreed to purchase the compressor station in place for $28,600.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 22, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 29, 1948, in Docket No. G-704 (7 FPC 24).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

*The Commission orders:*

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED GAS PIPE LINE COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP67-315

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 28, 1967)

On April 27, 1967, United Gas Pipe Line Company (United) and Natural Gas Pipeline Company of America (Natural), filed in Docket No. CP67-315 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application.

Specifically, Applicant seeks authorization to modify facilities so as to convert an existing point of interconnection in Polk County, Texas, from solely a sales point to both a sales point and an emergency exchange point. The exchange will be on a gas for gas basis, and will be covered in the gas exchange agreement to be filed by United and Natural as special rate schedules to their respective tariffs.

The Commission in its order issued May 18, 1962, 27 FPC 997, in Docket Nos. CP62-121 and CP62-134 authorized United, among other things, to install facilities and deliver up to 50,000 Mcf of natural gas per day to Natural at the Polk County interconnection (to be converted into an exchange point). In Docket No. CP62-175 United was authorized (August 14, 1962) to increase its daily deliveries to Natural to 75,000 Mcf per day. Through the proposed facilities natural gas will normally be sold to Natural, but in an emergency increased volumes would be delivered to Natural or the flow could be reversed to permit deliveries by Natural to United. Under emergency exchange conditions the total volume to be received by Natural (200,000 Mcf per day) would include United's authorized sales volume of 75,000 Mcf per day.

Applicant's estimate that the cost of modifying United's metering facilities will be $7,070, and cost of Natural's side tap facilities will be $3,300, which will be defrayed from their respective company funds on hand. United will own, operate and maintain the metering facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on June 22, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, United Gas Pipe Line Company, a Delaware Corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(3) The proposed construction and operation of facilities and exchange of natural gas as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid construction and operation of facilities and emergency exchange of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) United and Natural are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural

Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon United's and Natural's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to United and Natural in this proceeding, authorizing the construction and operation of facilities and the emergency exchange of natural gas as hereinbefore described and as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission upon the terms and conditions of this order .

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon United and Natural's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

(D) United and Natural shall file within 30 days after the issuance of this order the exchange agreement dated March 2, 1967, as a special rate schedule to their respective FPC Gas Tariffs.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP67-218

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1967)

On January 31, 1967, Alabama-Tennessee Natural Gas Company (Applicant) filed in Docket No. CP67-218 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in order to render additional natural gas service to certain existing resale and industrial customers beginning with the 1967-68 winter season and continuing thereafter, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 2.1 miles of 10¾ inch O.D. pipeline loop in Limestone County, Alabama, paralleling its existing 10¾ inch main line in that area and completing the looping of its main line system in the State of Alabama. Applicant further proposes to construct and operate approximately 0.5 mile of 6-inch lateral pipeline loop in Colbert County, Alabama.

The proposed 0.5 mile of 6-inch lateral will extend from Applicant's Muscle Shoals Check Meter Station to the present beginning point of its existing 6-inch Ford Lateral and will parallel the existing 4-inch line which presently serves both Muscle Shoals Natural Gas Corporation (Muscle Shoals), a resale customer and Ford Motor Company (Ford), an industrial customer. This proposed lateral will enable Applicant to operate more efficiently by separating deliveries to Ford and to Muscle Shoals.

Applicant proposes to deliver a total additional volume of 4,650 Mcf of natural gas per day to 9 existing customers, 1,590 Mcf of this volume to be delivered to 6 of its resale customers[1] and 3,060 Mcf to be delivered to 3 of its industrial customers.[2]

The proposed additional sales of natural gas for resale will be made under existing rate schedules on file with the Commission and the proposed additional direct sales will be made under contracts previously filed with the Commission.

The total estimated cost of Applicant's proposed project is $130,000, which cost will be financed from current earnings and short-term bank loans.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

At a hearing held on June 22, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Alabama-Tennessee Natural Gas Company, a Delaware corporation having its principal place of business in Florence, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 2, 1948, in Docket No. G-585 (7 FPC 251).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f) and (g) of Section 157.20 of said Regulations.

(5) The certificate hereinafter issued should be conditioned upon Applicant's filing with the Commission, in accordance with the Commission's Regulations under the Natural Gas Act, appropriate revised service agreements with those customers to whom increased natural gas service will be rendered pursuant to the authorization contained herein.

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[1] Decatur, Russellville, Sheffield and Tuscumbia, Alabama; Selmer, Tennessee and Muscle Shoals Natural Gas Corporation.

[2] Amoco Chemicals Corporation, Reynolds Metals Company and Ford Motor Company.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of the facilities and the transportation and sale of natural gas as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (1), (c) (3), (c) (4), (e), (f) and (g) of Section 157.20 of such Regulations.

(C) Transportation of natural gas by Applicant for direct sale to Amoco Chemicals Corporation, Reynolds Metals Company and the Ford Motor Company shall be limited in Mcf per day to 960, 16,500, and 3,400, respectively, in accordance with Applicant's proposal herein.

(D) The facilities authorized shall be completed and placed in actual operation and transportation and sale of natural gas authorized in paragraph (A) above shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date of this order.

(E) The certificate issued by paragraph (A) above is conditioned upon Applicant's filing with the Commission, in accordance with the Commission's Regulations under the Natural Gas Act, appropriate revised service agreements with those customers to whom increased natural gas service will be rendered pursuant to the authorization contained herein.

(F) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring additional gas to meet any future increase in their requirements.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP67–265

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1967)

On March 16, 1967, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP67–265 an application and a supplement thereto on May 3, 1967 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas on a short-term basis to Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application and supplement.

Applicant seeks authorization to sell and deliver to Panhandle on an interruptible basis such daily volumes of natural gas as Panhandle may require and as Applicant may have available for a term ending one year from the date of initial delivery. Panhandle anticipates that its purchases will average 15,000 Mcf of natural gas per day during the term of the agreement. Applicant is not required on any day to deliver quantities of natural gas in excess of 20,000 Mcf of natural gas per day. Panhandle will pay a commodity charge of 15.5 cents per Mcf of natural gas for all volumes delivered by Applicant.

Sales are to be pursuant to a signed contract, dated February 13, 1967, which will be filed as Rate Schedule X-32. The contract provides for fully interruptible sales of up to 20,000 Mcf per day for a term of one year from the date of initial delivery.

Applicant proposes to make deliveries at two existing interconnections one in Grant County, Kansas, the other in Hutchinson County, Texas.

After due notice, no protest to the granting of the application has been filed. The State Corporation Commission of Kansas filed a notice of intervention on April 3, and a supplement thereto on April 7, 1967 but does not request a formal hearing or object to Applicant's proposals. Similarly the petition to intervene filed by Panhandle Eastern Pipe Line Company on April 13, 1967 does not request a formal hearing or object to Applicant's proposals.

At a hearing held on June 22, 1967, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The proposed sale of natural gas, as hereinbefore described and as more fully described in the application and supplements and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (c) (3) and (e) of Section 157.20 of such Regulations.

*The Commission orders:*

(A) A certificate of public convenience and necessity is issued to Applicant, authorizing the sale of up to 20,000 Mcf per day of natural gas for a period of one year from the date of initial delivery as described herein and as more fully described in the application and supplement filed in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sales and deliveries authorized in paragraph (A) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 30 days of the issuance of this order.

(D) Applicant shall make appropriate tariff filings reflecting the sales and deliveries authorized herein.

(E) The interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Colorado Interstate Gas Company for firm service to its customers.

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Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP67-296

### FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1967)

On April 11, 1967, Southern Natural Gas Company (Applicant) filed in Docket No. CP67-296 a "budget-type" application as supplemented on April 28, 1967, pursuant to Section 7(c) of the Natural Gas Act as implemented by Section 157.7(b) of the Regulations under the Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Specifically, Applicant proposes to construct during the twelve-month period commencing August 7, 1967, and to operate routine gas purchase facilities necessary to enable it to take into its certificated main pipeline system natural gas purchased from independent producers or other similar sellers authorized by the Commission to make a sale to Applicant for resale in interstate commerce.

The total estimated cost of Applicant's proposed construction will not exceed a maximum of $1,000,000, with no single project exceeding a cost of $500,000. Applicant proposes to finance said costs from cash on hand or from funds available from current operations.

Because the total maximum expenditure proposed for a single project exceeds the limitations prescribed by Section 157.7(b)(1)(ii) of the Regulations under the Natural Gas Act, Applicant requests waiver thereof.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on June 22, 1967, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

*The Commission finds:*

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942 in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) Good cause has been shown for waiver of the cost limitations imposed by Section 157.7(b)(1)(ii) of the Regulations under the Natural Gas Act.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing August 7, 1967, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,000,000, with no single project to exceed a cost of $500,000.

*The Commission orders:*

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct during the 12-month period commencing August 7, 1967, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The cost limitations imposed by Section 157.7(b)(1)(ii) of the Regulations under the Natural Gas Act are hereby waived in this proceeding.

(D) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (e), (f) and (g) of Section 157.20 of said Regulations.

(E) The authorization granted in paragraph (A) above is limited to construction during the 12-month period commencing August 7, 1967, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $1,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., DOCKET NO. CP66-269; PAN AMERICAN PETROLEUM CORPORATION, ET AL., DOCKET NO. CI66-910, ET AL.; THE DELTA DEVELOPMENT COMPANY, INC., DOCKET NO. CI67-1805; MOISE W. DENNERY, DOCKET NO. CI67-1806; CHARLES WILLIAM FASTERLING, DOCKET NO. CI67-1807; GERTRUDE JACKMAN FASTERLING, DOCKET NO. CI67-1808; JOHN BERNARD FASTERLING, III, DOCKET NO. CI67-1809; THE LOUISIANA LAND AND EXPLORATION COMPANY, DOCKET NO. CI67-1810; JOSEPH MCCLOSKEY, DOCKET NO. CI67-1811; JOAN B. FASTERLING MEYERS, DOCKET NO. CI67-1812; EDITH FASTERLING MCGEE AND KENNETH C. MCGEE, DOCKET NO. CI67-1813

### ORDER INITIATING PROCEEDINGS, CONSOLIDATING PROCEEDINGS AND SETTING THE PROCEEDINGS SO CONSOLIDATED FOR HEARING

(Issued June 29, 1967)

Tennessee Gas Pipeline Company, the interstate pipeline division of Tenneco Inc., (Tennessee)[1] has applied, in Docket No. CP66-269, for a certificate of public convenience and necessity authorizing the construction and operation of 2.63 miles of pipeline facilities to connect reserves in the Bastian Bay Field, Plaquemines Parish, Louisiana, with its interstate pipeline transmission system. Pan American Petroleum Corporation (Pan American) has applied, in Docket No. CI66-910, for a certificate of public convenience and necessity authorizing the assignment of certain leasehold interest in developed acreage in the Bastian Bay Field. Each of these applications has been filed pursuant to our mandate in Opinion No. 413, 30 FPC 1477 (1963), rehearing denied, 31 FPC 241 (1964).

The Bastian Bay acreage involved in each of the applications was acquired by Pan American between 1954 and 1959 through its acquisition of twelve oil, gas, and mineral leases in what was then undeveloped acreage. By 1960 Pan American had succeeded in proving all of the acreage covered by the twelve leases and on December 1, 1960, it consummated a "Lease Sale Agreement" and an "Assignment and Conveyance" whereby it assigned to Tennessee its rights in the twelve leases, together with its wells, equipment and related personal property on the acreage affected, for a purchase price, subject to redetermination, of $159,463,500. Tennessee paid $9,427,104 at the time and agreed to pay the balance in seventeen annual installments. The contract provided for a redetermination of the gas revenues, which had been agreed by the parties at the time of contracting to be 759,350,000 Mcf at 15.025 psia, between 1969 and 1973 at the request of either party and for the adjustment of the purchase price upon such redetermination.

The assignment of leases was subject to certain reservations. Pan American (1) retained its rights in minerals other than natural gas, oil, and other petroleum liquids; (2) retained its rights in the leases below the bottom of the deepest presently known productive horizons; (3) reserved, as a production payment, all proceeds received by Tennessee from the sale of oil produced on the leased acreage, such payment to terminate when 85% of the recoverable reserves have been produced; (4) reserved a similar production payment for proceeds received by Tennessee from the sales of separator liquids, permitting the deduction by Tennessee of its costs and expenses associated with such sales; and (5) retained the right to process all gas produced from the assigned leaseholds (including that attributable to the royalty interests) for the discovery of natural-gas liquids, with Tennessee to be reimbursed at 21 cents per Mcf for plant and fuel losses.

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[1] Formerly Tennessee Gas Transmission Company. By order of July 20, 1966, 36 FPC 137. we permitted the amendment of Tennessee's pending application to reflect the change in corporate name which previously had been effected.

Prior to the assignment Pan American's wells had not been connected to an interstate pipeline. Following the sale Tennessee installed 2.63 miles of 12-inch connecting line for which it here seeks certification. Gas from the Bastian Bay leaseholds has flowed into Tennessee's system since February 3, 1961.

Tennessee's construction of connecting facilities was undertaken pursuant to a budget certificate issued to it on January 6, 1961, in Docket No. CP61–106, pursuant to an application for facilities "to relieve applicant of the time and expense of preparing numerous relatively minor certificate applications, and the Commission and its staff of the burden of processing such routine applications." The application made no reference to Tennessee's acquisition of Bastian Bay reserves nor did it disclose Tennessee's intention to rely on the issuance of a budget authorization to connect any such reserves. As the budget application appeared routine and as no petition to intervene or protest had been filed, we granted the application, 25 FPC 129.

Subsequently, on April 6, 1961, having learned of the attachment by Tennessee of the Bastian Bay reserves, we reopened the proceedings in Docket No. CP61–106 to determine (1) whether the budget-type certificate therein issued covered the 2.63 miles of line connecting the Bastian Bay reserves with Tennessee's interstate system and (2) the cost to Tennessee of the reserves so acquired. On March 21, 1962, in Docket No. CI62–1034, we directed Pan American to show cause why it should not be found to have made a jurisdictional sale of natural gas to Tennessee. The show cause order thereafter was consolidated with the reopened Tennessee docket.

Following hearing the Commission, in Opinion No. 413, held, as to Tennessee, that the budget-type certificate did not cover the construction and operation of the 2.63 miles of connecting line noting that "the very size and cost of these reserves will necessarily have a material effect on Tennessee's rates." 30 FPC at 1486. Accordingly, the Commission concluded that the authorization of the connecting facilities without close scrutiny would be inconsistent with the mandate of CATCO (*Atlantic Refining Co.* v. *P.S.C. of N.Y.*, 360 U.S. 378.) This part of Opinion No. 413 was affirmed in *Tennessee Gas Transmission Co.*, v. *F.P.C.*, 340 F. 2d 100 (CA10). As to Pan American the Commission, although declining to determine the precise nature of the sale until such time as an appropriate application is filed, held that the Pan American-Tennessee leasehold assignment constitutes a jurisdictional sale of natural gas. Pan American and Tennessee were given six months from the date of the issuance of our order to file for appropriate Section 7 authorizations and the pending applications were filed pursuant thereto.

The royalty portion of the reserves at issue, as the Examiner found following the prior hearing, equals more than 25% of the total volume which Tennessee will receive from the leases, 30 FPC at 1491. Pursuant to its obligation under the lease assignment Tennessee negotiated separate contracts with the royalty owners whereby it agreed to pay the royalty owners for such interests at the rate of 22.5¢ per Mcf, plus reimbursement for the Louisiana severance tax of 2.3¢ per Mcf until January 1, 1962 and 25¢ per Mcf plus severance tax reimbursement (or 27.3¢ per Mcf) thereafter. Thus, it appears that the royalty owners have departed from the usual royalty situation and instead have elected to take their gas in-kind and negotiate their own sales. In the circumstances it would appear that these royalty owners have engaged in the jurisdictional sale of natural gas in interstate commerce for which sales the authorization of this Commission should have been obtained. Accordingly, we are hereby directing the following named royalty owners either to file, within forty-five days from the issuance of this order, for appropriate Section 7 certificates or to show cause why they should not be required to obtain such certification:[3]

The Delta Development Company, Inc.
Moise W. Dennery
Charles William Fasterling
Gertrude Jackman Fasterling
John Bernard Fasterling III
The Louisiana Land and Exploration Company
Joseph McCloskey
Joan B. Fasterling Meyers
Edith Fasterling McGee and Kenneth McGee

We note that in addition to the aforementioned, the State of Louisiana and one of its local subdivisions (the Buras Levee District) are among the royalty owners of the acreage at issue. But Section 2(6) of the Natural Gas Act would seem to exclude such political entities from the definition of "natural-gas company" and thus exempt them from the necessity of obtaining this Commission's authorization prior to effectuating an interstate sale. However, in view of the fact that this Commission already has made clear its concern with the cost to Tennessee of the Bastian Bay reserves we would expect that both the State of Louisiana and the Buras Levee district will be most interested in the course of these proceedings and we would welcome their participation as interveners.

Since the application of Tennessee and Pan American raise common questions of law and fact we are consolidating them for hearing. Similarly, since the applications or responses to be filed by the aforementioned royalty owners are intimately related to each of the pending applications it is appropriate to consolidate those proceedings as well.

Timely petitions to intervene in Docket No. CI66-910 (the Pan American application), have been filed by Long Island Lighting Co., Consolidated Edison Company of New York, Inc., Brooklyn Union Gas Company, Consolidated Gas Supply Corporation, the East Ohio Gas Company, Lake Shore Pipe Line Co., and the Peoples Natural Gas Company, The Manufacturers Light and Heat Company, The Ohio Fuel Gas Company, United Fuel Gas Company, and Tennessee Gas Pipeline Company, a division of Tenneco Inc. In Docket No. CP66-269 (the Tennessee application), timely petitions to intervene have been filed by Public Service Electric and Gas Company, United Fuel Gas Company, The Manufacturers Light and Heat Company, The Ohio Fuel Gas Company, Consolidated Gas Supply Corporation, The East Ohio Gas Company, Lake Shore

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[3] It should be clear that our action here in no way prejudges the pending proceeding of *William Harvey Denman, Trustee, et al. v. J.M. Huber Corporation*, Docket No. RI67-113, *et al.* In Denman the question is whether the Commission has jurisdiction over a landowner's royalty interest in natural gas leaseholds under traditional transactions where the royalty owner makes no independent contract for sale of his interest but instead receives a fixed percentage of the receipts the producer secures when he sells the gas.

**Pipe Line Co., The Peoples Natural Gas Company, The Brooklyn Union Gas Company, and Pan American Petroleum Corporation. Each of the timely petitions to intervene will be granted.[3]**

**These proceedings should be expedited by the holding of a pre-hearing conference to clarify the position of the parties and limit the issues. Since hearings have already been held on the underlying Bastian Bay transaction, the prehearing conference should also explore the extent to which the record in the prior hearings could be used in this case. The Examiner may allow the incorporation by reference of evidence from the prior proceeding in this proceeding and limit the presentation of the parties to the correction or supplementation of the prior record.**

***The Commission finds:***

**(1) It is necessary and appropriate in the public interest and to carry out the provisions of Sections 4, 5, 7 and 16 of the Natural Gas Act to direct Delta Development Company, Inc., Moise W. Dennery, Charles William Fasterling, Gertrude Jackman Fasterling, John Bernard Fasterling III, The Louisiana Land and Exploration Company, Joseph McCloskey, Joan B. Fasterling Meyers and Edith Fasterling McGee and Kenneth C. McGee to file, within 45 days of the issuance of this order, for appropriate certificates authorizing the sale by them, in-kind, of their royalty interests in gas in the Bastian Bay field to Tennessee, or show cause why they should not file for such certification.**

**(2) It is necessary and appropriate in the public interest and to carry out the provisions of Sections 4, 5, 7 and 16 of the Natural Gas Act to consolidate for hearing the proceedings heretofore initiated against the aforementioned royalty owners and the applications of Tennessee and Pan American.**

**(3) The granting of the above-mentioned petitions to intervene would be be in the public interest.**

***The Commission orders:***

**(A) That the Delta Development Company, Inc., Moise W. Dennery, Charles William Fasterling, Gertrude Jackman Fasterling, John Bernard Fasterling III, The Louisiana Land and Exploration Company, Joseph McCloskey, Joan B. Fasterling Meyers and Edith Fasterling McGee and Kenneth C. McGee, within 45 days of the issuance of this order, file appropriate applications for certificates authorizing the sale, by them, in-kind, of their royalty interest in Bastian Bay reserves to Tennessee or show cause why they should not be required so to file.**

**(B) That the proceedings hereby initiated against the aforementioned royalty owners and applications of Tennessee and Pan American are consolidated for hearing.**

**(C) That the above noted petitions to intervene are granted.**

**(D) That a prehearing conference shall be held in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., on September 25, 1967, at 10:00 a.m., for the purpose of limiting the issues, effectuating factual stipulations and for such other purposes as may seem appropriate to the Presiding Examiner.**

**(E) Following the prehearing conference, the Presiding Examiner shall give notice of the date of hearing and shall prescribe such other procedures as he deems appropriate in the disposition of these proceedings.**

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**[3] The Long Island Lighting Company, in addition to its timely intervention petition in the Pan American docket, filed an untimely intervention request in the Tennessee docket. In view of an order herein consolidating those dockets Long Island Lighting will be permitted to participate fully with respect to each of the applications.**

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. G-12446; CONTINENTAL OIL COMPANY, DOCKET NO. CI66-890; SUN OIL COMPANY, DOCKET NO. CI66-891; M. H. MARR, DOCKET NO. CI66-892; GENERAL CRUDE OIL COMPANY, DOCKET NO. CI66-919

### ORDER CONSOLIDATING PROCEEDINGS AND SETTING MATTERS FOR HEARING

(Issued June 29, 1967)

The Continental Oil Company (Continental), the Sun Oil Company (Sun), M. H. Marr (Marr) and the General Crude Oil Company (General), have applied for certificates of public convenience and necessity authorizing the assignment of certain leasehold interests in developed acreage in the Rayne Field, Arcadia Parish, Louisiana. Texas Eastern Transmission Corporation (Texas Eastern) has applied for a certificate of public convenience and necessity authorizing the construction and operation of a 2200 horsepower compressor station and 22 miles of 14-inch pipeline to transport natural gas from the Rayne Field to Opelousas, Louisiana, where the gas would be delivered into its interstate pipeline system. Each of these applications is before us pursuant to our mandate in Opinion No. 378, 29 FPC 249.

The initial transaction which gave use to these applications took place on February 1, 1957, when Texas Eastern executed conventional twenty-year gas sales contracts with Continental, Sun, Marr and General, purchasing their natural gas production in the Rayne Field at an initial price of 23.9 cents per Mcf, including 1.3 cents per Mcf for reimbursement of state taxes. In April 1957, Texas Eastern applied for a certificate authorizing it to connect that production to its interstate pipeline system. Shortly thereafter each of the producers applied for certificates authorizing the sale of their gas to Texas Eastern. On April 15, 1958, the Examiner issued his initial decision wherein he recommended the grant of unconditional certificates to each of the applicants. However, before the Commission could act on the exceptions but after the decision of the Court of Appeals for the Third Circuit in *Public Service Commission of New York* v. *Federal Power Commission*, 257 F. 2d 717, affirmed *sub nom. Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 (the "CATCO" case), the producers cancelled their original contracts with Texas Eastern and, in September 1958, Texas Eastern filed a petition to reopen the hearing and to amend its application.

A new plan was then formulated under which Texas Eastern agreed to acquire the leasehold interest in the reserves which the producers had formerly committed under the standard gas purchase contracts. To effectuate the plan, Continental, Sun, Marr and General, on December 4, 1958, entered into a contract (designated "Lease Sale Agreement"), with Louisiana Gas Corporation, an intermediary created by Texas Eastern for this transaction. Texas Eastern, by agreement with Louisiana Gas, had the right to acquire and did acquire, title to the "Lease Sale Agreement".

Under the agreement the producers conveyed their leasehold rights to gas down to the base of the Nodosaria "A" Sand at a depth of from 13,650 to 13,980 feet, together with wells and related equipment, but reserved their "leasehold" rights to the oil and other minerals, except gas and condensate, below the Nodosaria "A" Sand. The producers also retained the right to receive, as "production payments", all proceeds from the sale of the condensate in excess of the costs of operating the leasehold, including processing expenses. Continental, which previously had operated the field for itself and the other producers, was to continue to conduct all operations, including drilling, developing and managing the wells and well equipment. A management agreement so providing was signed on July 27, 1959.

Consideration for the conveyance was $134,595,700, of which $12,420,500 was paid in cash and the balance in promissory notes payable in sixteen annual installments (ending in 1975). If gas production exceeds a specified amount payment of the notes, at Texas Eastern's nomination, may be accelerated (in inverse order of maturity) in accordance with a prescribed formula.

Although the exact amount of recoverable reserves in the Rayne Field is a matter of controversy, they are admittedly substantial; Texas Eastern's exceeds 900,000,000 Mcf. Recently, by supplement to their pending applications, the producers have filed an undertaking in which they guarantee minimum reserves of 830,648 MMcf at 14.73 psia and 60° F., agreeing to reimburse Texas Eastern in the amount of 20.220¢ per Mcf for any reserve deficiency below that amount providing such deficiency is not attributable to bad management on the part of Texas Eastern.

The Commission granted Texas Eastern's request to reopen the proceeding in order to consider the lease sale plan, and on June 23, 1959, 21 FPC 860, issued an unconditional certificate to Texas Eastern for its proposed facilities. On June 27, 1959, the transfer of the gas rights under the leases was completed and Texas Eastern began to receive gas from Rayne Field, gas which it has since transmitted and sold at wholesale in interstate commerce. However, on review, the Court of Appeals for the District of Columbia Circuit set aside the certificate order and remanded the case for further proceedings. *Public Service Commission of New York* v. *Federal Power Commission*, 287 F. 2d 143. The court held that, regardless of the form of the transaction, the Commission was required to consider fully the reasonableness of the acquisition costs to the pipeline.

On remand, and following a hearing at the conclusion of which the Examiner found that the average cost to Texas Eastern would be 24.34¢ per Mcf at 15.025 psia and recommended that a certificate to it be conditioned upon the inclusion of Rayne Field gas in the pipeline's cost of service at an initial price of 18.5¢ per Mcf, the Commission decided that it had jurisdiction over the "in-place" sale of the Rayne Field gas reserves but concluded that it was not in the public interest to certificate the transaction then before us for we were not satisfied that the unit cost of the gas was reasonable or that it could be determined with reasonable accuracy. Rather than deny outright Texas Eastern's application the Commission afforded it and the sellers an opportunity to revise their contractual arrangements so as to furnish assurance that the transactions, already partially consummated, would be consistent with the public interest.

The parties were given six months, following the completion of judicial review, "to work out new arrangements in the light of the requirements of the Natural Gas Act and our discussion * * *." 29 FPC at 257. Following affirmance by the Supreme Court of the Commission's holding that the assignment of the leaseholds constituted a jurisdictional sale of natural gas subject to the jurisdiction of this Commission, (*United Gas Improvement Co.* v. *Continental Oil Co., et al.*, 381 U.S. 392) Continental, Sun, Marr and General filed applications pursuant to our mandate. Texas Eastern has chosen to proceed upon the application which it filed on April 22, 1957 as amended on December 5, 1958.

Since the applications of Continental, Sun, Marr, General and Texas Eastern raise common questions of law and fact, we are consolidating them for hearing. Timely petitions to intervene were filed in Continental, Sun, Marr and General dockets by The Manufacturers Light and Heat Company, The Ohio Fuel Gas Company, Consolidated Gas Supply Corporation, The East Ohio Gas Company, The Peoples Natural Gas Company, The River Gas Company, Philadelphia Electric Corporation, Consolidated Edison Company of New York, Inc., Texas Eastern Transmission Corporation, Public Service Electric and Gas Company, Philadelphia Electric Company, Brooklyn Union Gas Company, and The Philadelphia Gas Works Division of The United Gas Improvement Company. The Public Service Commission of New York and The Long Island Lighting Company did not move to intervene in the General docket but did in the others. Nevertheless, in view of our action consolidating the proceedings they will be permitted to participate fully with respect to each of the applications, as will each of the parties already permitted to intervene in the Texas Eastern docket.

These proceedings should be expedited by the holding of a prehearing conference to clarify the position of the parties and limit the issues. Since hearings already have been held on the underlying Rayne Field transaction, the prehearing conference should explore the extent to which the record in the prior hearing could be used in this case. The Examiner may allow the incorporation by reference of evidence from the prior proceeding in this proceeding and limit the presentation of the parties to the correction or supplementation of the prior record.

*The Commission finds:*

(1) It is necessary and appropriate in the public interest and to carry out the provisions of Sections 4, 5, 7 and 16 of the Natural Gas Act to consolidate for hearing the Continental, Sun, Marr, General and Texas Eastern applications.

(2) The granting of the above-mentioned petitions to intervene would be in the public interest.

*The Commission orders:*

(A) That the application of Continental (Docket No. CI66-890), Sun (Docket No. CI66-891), Marr (Docket No. CI66-892), General (Docket No. CI66-919) and Texas Eastern (Docket No. G-12446) are consolidated for hearing.

(B) That the above-noted petitions to intervene are granted.

(C) That a prehearing conference shall be held in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., on October 22, 1967, at 10:00 a.m., for the purpose of limiting the issues, effectuating factual stipulations and for such other purposes as may seem appropriate to the Presiding Examiner.

(D) Following the prehearing conference, the Presiding Examiner shall give notice of the date of hearing and shall prescribe such other procedures as he deems appropriate in the disposition of these proceedings.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP61-123

### ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1967)

On May 15, 1967, Texas Gas Transmission Corporation (Petitioner) filed in Docket No. CP61-123 a petition to amend the order issued by the Commission in said docket on February 8, 1965, 33 FPC 196, by authorizing Petitioner to construct and operate approximately 3.82 miles of 26-inch pipeline and thereby conform the certificate to the actual installation, all as more fully set forth in the petition to amend.

The above-mentioned order authorized Petitioner, *inter alia*, to construct and operate approximately 5.31 miles of 26-inch pipeline loop between its Hardinsburg, Kentucky, Compressor Station and its Jeffersontown, Kentucky, Compressor Station. By the instant filing, Petitioner seeks authorization for the construction and operation of 3.82 miles of 26-inch pipeline loop which it has already installed to complete the aforementioned pipeline loop. The actual installation required a loop segment of approximately 9.13 miles and Petitioner inadvertently proposed to install only 5.31 miles of the 9.13 mile segment. This proposal was authorized by order issued February 8, 1965. Petitioner's operating department was unaware of this omission and constructed the correct length of the segment. Thus Petitioner installed approximately 3.82 miles of 26-inch pipeline for which it had no authority.

The total actual cost to Petitioner of the approximately 9.13 miles of 26-inch pipeline was $882,343 of which the estimated cost of the 5.31 mile segment was $511,665.

After due notice, no protest, petition to intervene or notice of intervention has been filed.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in the instant docket on February 8, 1965, be amended as hereinafter ordered and conditioned.

*The Commission orders:*

(A) The Commission's order issued on February 8, 1965, in Docket No. CP61-123 is amended by authorizing Petitioner to construct and operate approximately 9.13 miles of 26-inch pipeline loop in lieu of the 5.31 miles of 26-inch pipeline loop authorized therein.

(B) In all other respects the certificate issued in the subject docket shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor Jr., Charles R. Ross, Carl E. Bagge and John A. Carver, Jr.

## UNITED FUEL GAS COMPANY, DOCKET NO. G-10658

### ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 29, 1967)

On May 12, 1967, United Fuel Gas Company (Petitioner) filed in Docket No. G-10658 a petition to amend the order issued in said docket on September 18, 1956, 16 FPC 978, as amended by the orders issued October 27, 1964, 32 FPC 1221, and March 31, 1967, 37 FPC 703, authorizing an extension of one month in the period during which increased daily deliveries may be made, on an interruptible basis to one of its industrial customers all as more fully set forth in the petition to amend.

By the order issued in the instant proceeding on September 18, 1956, Petitioner was authorized to deliver a maximum of 35,000 Mcf of natural gas per day to E. I. du Pont de Nemours Company (du Pont), Belle, Kanawaha County, West Virginia. By the amending order issued October 27, 1964, Petitioner was authorized to increase its deliveries to du Pont to a maximum of 60,000 Mcf per day.

On March 31, 1967, Petitioner was authorized to deliver to du Pont for the period from April 1, 1967, through October 1, 1967, a maximum daily quantity of 70,000 Mcf in order that du Pont may effectuate certain changes in its plant facilities.

Petitioner now states that it inadvertently mis-stated the interim period during which the increased deliveries were required, and that the customer actually requested such increased volumes for the period April 1, 1967, through October 31, 1967. Petitioner requests further amendment of the Commission's amending order, issued March 31, 1967 so as to terminate the interim authorization on October 31, 1967, in lieu of the existing termination date of October 1, 1967.

Due notice of the filing of the petition to amend and opportunity for hearing thereon have been given by publication in the Federal Register on May 25, 1967 (32 F.R. 7650). No protest, petition to intervene, or notice of intervention has been filed in the proceeding concerning this amendment.

*The Commission finds:*

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 18, 1956, as amended October 27, 1964, and March 31, 1967, in Docket No. G-10658 be further amended as hereinafter ordered.

*The Commission orders:*

(A) The Commission's order issued September 18, 1956, as amended October 27, 1964, and March 31, 1967, is further amended so as to authorize Petitioner to transport and deliver up to 70,000 Mcf of natural gas daily on an interruptible basis to du Pont to October 31, 1967, in lieu of October 1, 1967, as presently fixed.

(B) The certificate order issued in Docket No. G-10658 is amended on the express condition that the increased interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future maximum contract obligations of Petitioner for firm service to its customers.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge

## INDEPENDENT PRODUCERS OF NATURAL GAS—ANTI-TRIGGERING CONDITIONS IN CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, DOCKET NO. R-329

### ORDER NO. 352

### ELEVENTH AMENDMENT TO STATEMENT OF GENERAL POLICY NO. 61-1

(Issued June 30, 1967)*

The Tenth Amendment to the Commission's Statement of General Policy No. 61-1** provided that all permanent certificates issued with respect to applications filed after April 15, 1965, would contain substantially the following condition:

> No increase in rate shall be filed prior to ---------- at any price which would exceed the ceiling prescribed for the given area by paragraph (d) of the Commission's Statement of General Policy 61-1, as amended.

The moratorium period in the above condition extended to January 1, 1968, for all areas except the South Louisiana and Oklahoma areas where a July 1, 1967, date had previously been established.

In view of the pending expiration of these moratoria periods, we think it appropriate for the same reasons set forth in the Tenth Amendment to revise paragraph (d) of the Commission's Statement of General Policy No. 61-1 to preclude any rate increase filing above the anti-triggering levels set forth therein until January 1, 1970, in all permanent certificates issued with regard to applications filed on or after July 1, 1967. Applications filed prior to July 1, 1967, will remain subject to the provisions of the Tenth Amendment. (§ 2.56 (d)(1), (2)).

Any applicant wishing to demonstrate that the price specified in the Policy Statement is not a triggering rate or otherwise wishing to contest the propriety of the condition will be permitted to do so, upon filing a timely request. In such situation, the application will be set for formal hearing and, if the producer wishes to commence operation pending such hearing, he must comply with the provisions of section 157.28 of the Regulations under the Natural Gas Act governing temporary authorizations.

*The Commission finds:*

In view of the fact that this Statement of Policy does not prescribe any course of action on the part of any person but merely sets forth the Commission's contemplated course of action, notice under section 4 of the Administrative Procedure Act (5 U.S.C. 553) is not required and the Statement may be made effective upon issuance.

*The Commission*, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly sections 4, 5, 7, and 16 thereof (52 Stat. 822, 823, 824, 830; 15 U.S.C. 717c, 717d, 717f, 717o), *orders*:

(A) Effective upon the issuance of this order, § 2.56, Part 2, Statements of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, is amended by adding thereto a center heading and two new subparagraphs (3) and (4) to paragraph (d), as follows:

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*Published in the Federal Register on July 7, 1967 (32 F.R. 9955).

**Promulgated by Order No. 296, Docket No. R-273, issued April 5, 1965 (33 FPC 682, 30 F.R. 4670).

**[Eleventh Amendment]**

**§ 2.56 Area price levels for natural gas sales by independent producers.**

* * * * * * *

**(d) *****

**(3) All permanent certificates of public convenience and necessity granting applications filed on or after July 1, 1967, will contain a condition, substantially in the language set out in subparagraph (4) of this paragraph, precluding any filing of an increased rate at a price in excess of those designated in the table referred to in subparagraph (1) of this paragraph, prior to January 1, 1970, unless at the time of filing such certificate application, or within the time fixed in the notice of application for filing protests or petitions to intervene, the applicant indicates in writing that it is unwilling to accept such a condition in which event the application will be set for formal hearing to determine, *inter alia*, whether any grant of certificate shall be so conditioned.**

**(4) Standard anti-triggering condition: "No increase in rate shall be filed prior to January 1, 1970 at any price which would exceed the ceiling prescribed for the given area by paragraph (d)(3) of the Commission's Statement of General Policy No. 61-1, as amended."**

**(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge**

## PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON AND CITY OF EVERETT, WASHINGTON, PROJECT NO. 2157

### SUPPLEMENTAL ORDER

**(Issued June 30, 1967)**

**Pursuant to the Commission's order of May 19, 1967, 37 FPC 957, as amended, a hearing was convened in Seattle, Washington on *inter alia* water releases in the Sultan River, project inspection and consideration of repairs to project structures. Testimony of witnesses for the joint licensees at pages 76, 77, 86, 87 and 123 of the record makes it clear that repairs to Culmback Dam outlet tunnel, one of the project structures, may be safely deferred until next year. However, conditions of the downstream diversion dam utilized in water supply to the City of Everett are such that repairs are immediately necessary this year in order to avoid danger of structural failure and subsequent serious impairment of the City's water supply system.**

**To meet the above conditions by accomplishing necessary repairs to the diversion dam this summer, staff, joint licensees and petitioners State of Washington Department of Fisheries and Game, recognized the need for certain minimum water releases during the period of repair to preserve fish life. The understanding of the joint licensees and petitioners is reflected in an agreement dated June 15, 1967, pages 239 and 240 of the record.**

**Following execution of the June 15, 1967 agreement the hearing was recessed by the Presiding Examiner to permit joint licensees to begin immediate plans for making repairs as soon as possible to the diversion dam and to provide the minimum water releases for fish (Tr. 240-241).**

**Counsel for the Public Utility District at page 237 of the record noted that the June 15 agreement was made with the understanding that it would not prejudice the rights of the Public Utility District or City with regard to future water releases when repairs are made at Culmback Dam and/or the City's diversion dam in 1968 or beyond.**

***The Commission finds:***

**It is necessary and appropriate for the purposes of the Federal Power Act, the Commission's Regulations thereunder and the license for Project No. 2157 to order as hereinafter provided.**

***The Commission orders:***

**(A) Further hearings in this proceeding are continued for a period of 120 days.**

**(B) The Commission's order of May 19, 1967 requiring continuation of present flows is modified in accordance with the terms of the June 15 agreement of the joint licensees and petitioners which is hereby incorporated by reference in its entirety, so as to provide a temporary minimum flow of water for fish during the period the diversion dam is under repair.**

**(C) Joint licensees shall submit within 21 days from the date hereof for Commission consideration revised Exhibit L drawings reflecting the proposed repairs or modification of the diversion dam facility.**

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**Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge**

## ROCHESTER GAS AND ELECTRIC CORPORATION, PROJECT NO. 2584

### ORDER ISSUING LICENSE (MAJOR)

**(Issued June 30, 1967)**

**Application was filed on March 24, 1966, by Rochester Gas and Electric Corporation (Applicant) of Rochester, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2584, known as Station 26 Project, located on the Genesee River in the City of Rochester, Monroe County, New York. No lands of the United States are affected by the project.**

**The project, originally constructed in 1903, contained a single generating unit of 425 horsepower capacity. This unit was replaced in 1922 by a 500 horsepower unit. In 1952 a new powerhouse was placed in operation containing a generating unit having a capacity of about 4,000 horsepower. Construction of the new powerhouse commenced in October of 1950 and completion was accomplished in October of 1953.**

**The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to Section 4(e) of the Federal Power Act.**

**The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project terms and conditions in the interests of fish and wildlife and recreation as set forth in attached Form L-3, and a special condition, designated as Article 33, providing for future modifications of project facilities and operation as may reasonably be necessary in the interest of improving water quality conditions within the project, following completion and review of water quality studies by Federal agencies in the Lake Ontario Basin.**

Exhibits L-1 and R-1 (FPC Nos. 2584-4 and -5, respectively) which we are approving as part of this license, show two low weirs to be constructed in the Genesee River by Applicant under a proposal to the City of Rochester in connection with the latter's Genesee Crossroads Urban Renewal Project to provide scenic pools where at times the river bottom is exposed. However, since the weirs are being included in this license as part of the project works, and the project boundary shown on Exhibit K (FPC No. 2584-2) does not encompass the areas within the river which are to be occupied by the weirs and the reflecting pools, we are by Article 34 providing that the licensee file a revised Exhibit K to include within the project boundary the two weirs and reflecting pool areas.

In Docket No. E-7154 (32 FPC 48, 49), (July 7, 1964), the Commission found that the Genesee River from above the Rochester Gas and Electric Corporation's project works * to its mouth at Lake Ontario is a "navigable water of the United States" within the meaning of Section 23(b) of the Federal Power Act. The Commission's finding, and order based thereon, were sustained on April 6, 1965 by the United States Court of Appeals, Second Circuit, insofar as the Commission's finding and order related to the reach of the Genesee River occupied by Project Nos. 2582, 2583 and 2584. *Rochester Gas and Electric Corporation* v. *Federal Power Commission*, (344 F. 2d 594-599, cert. denied, 382 U.S. 832). Docket No. E-7154 was initiated by a petition for declaratory order filed by applicant on March 2, 1964.

For the reasons set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of October 1, 1950, since neither a declaration of intention nor a timely application for license was filed with respect to the 1950 construction, and a termination date of December 31, 1993.

The Department of the Interior has advised that the National Register of historic sites, established under the provisions of Public Law 89-665 (80 Stat. 915), lists two historic landmarks within the City of Rochester. Neither of these landmarks is affected by the subject hydroelectric plant.

*The Commission finds:*

(1) Project No. 2584, is located on navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of New York, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

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*Comprising three hydroelectric projects (Project Nos. 2582, 2583 and 2584) located on the Genesee River within 6 miles of its mouth in Lake Ontario, and one hydroelectric project (Project No. 2596) located on the river about 65 miles above its mouth.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 4,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The following described Exhibit R conforms to the Commission's rules and regulations and should be approved as part of this license:

Exhibit R, consisting of 11 typewritten pages titled "Statement Respecting Public Utilization and Recreational Uses"; a copy of a certified resolution of the Council of the City of Rochester dated March 9, 1966; and seven photographs, all filed March 24, 1966, and

Exhibit R-1, Sheet 1 (FPC No. 2584-5) titled "Recreational Facilities—Station 26 Area" also filed March 24, 1966.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

*The Commission orders:*

(A) This license is hereby issued to Rochester Gas and Electric Corporation (Licensee) of Rochester, New York, under Section 4(e) of the Federal Power Act (Act) for a period effective as of October 1, 1950 and terminating December 31, 1993, for the continued operation and maintenance of Station 26 Project No. 2584, located on the Genesee River in the City of Rochester, Monroe County, New York, and affecting navigable waters of the United States, subject to the term and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Station 26 Project No. 2584 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2584-1) Showing—General Map of Project Area.

Exhibit K: (FPC No. 2584-2) Showing—Detail Map of Project Area and Boundary.

(ii) project works consisting of: (1) a reinforced concrete intake structure located upstream from the New York State Barge Canal's Court Street dam; (2) a concrete penstock about 260 feet long; (3) a tailrace about 590 feet long and 40 feet wide; (4) a 323-foot baffle wall from the powerhouse to Court Street Bridge; (5) an indoor powerhouse containing a single unit with rated capacity of 3,000 kw; (6) two 4,150 volt underground cables, approximately 1,800 feet long; and (7) appurtenant facilities: the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

| Exhibit L Sheet No. | FPC No. 2584- | Showing |
|---|---|---|
| 1 | 3 | Section of intake, penstock and powerhouse. |
| 2 | 4 | Location plan and section of proposed weirs. |

*Exhibit M:* Consisting of two typewritten pages entitled, "General Description of Equipment" filed with the Commission March 24, 1966,

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised September 1, 1966) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (36 FPC 971), which terms and conditions, designated as Articles 1 through 31, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

*Article 32.* The Licensee shall pay the United States the following annual charge, effective October 1, 1950:

> For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 4,000 horsepower.

*Article 33.* The Licensee shall, following completion and review of water quality studies now being conducted by Federal agencies in the Lake Ontario Basin, install such facilities or modify project operations as may be necessary in the interests of improving water quality conditions in the Genesee River as may be ordered by the Commission upon its own motion or upon recommendation of appropriate Federal or state agencies, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable and consistent with the provisions of the Act.

*Article 34.* Within two years following the issuance of this license, revised Exhibit K shall be prepared and filed in accordance with Commission regulations to include within the project boundary the recreation lands and facilities (including two low-level weirs in the Genesee River) shown on Exhibit R approved herein.

(D) The Exhibit R described in finding (7) above is hereby approved as part of this license.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(F) The Licensee shall within 90 days from the date of issuance of this license, file in accordance with the provisions of Section 11.20(a)(4) a statement under oath showing the gross amount of power generation for the project in kilowatt-hours for each calendar year commencing October 1, 1950.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

[illegible]

## APPLICATIONS OF PRODUCERS OF NATURAL GAS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY DISPOSED OF DURING THE PERIOD OF JANUARY 1, 1967 THROUGH JUNE 30, 1967; SERVICE BEGINNING SUBSEQUENT TO JUNE 7, 1954

| PRODUCER,[2] DOCKET NO. AND PURCHASER[2] | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Acco Oil & Gas Co.: | | | | | |
| CI67-1328—United Gas Pipe Line Co., | North Indian Hills | Tex | Montgomery | 5 16 67 | Iss. |
| R. H. Adkins, d/b/a Hughes Gas Co. | | | | | |
| CI67-590—Cumberland & Allegheny Gas Co. | Roaring Creek | W. Va | Randolph | 1 17 67 | Iss. |
| CI67-882—Consolidated Gas Supply Corp. | Oceana District | W. Va | Wyoming | 3 21 67 | Iss. |
| Leota Adrian, Agent for Carl J. Adrian: | | | | | |
| CI67-1177—Natural Gas Co. of W. Va. | Richhill Township | Pa | Greene | 5 12 67 | Iss. |
| Robert E. Aikman, et al.: | | | | | |
| CI67-903—Panhandle Eastern Pipe Line Co. | N. E. Sampsell | Okla | Cimarron | 4 14 67 | Iss. |
| CI67-1019—Natural Gas Pipeline Co. of America. | North Lovedale | Okla | Harper | 4 19 67 | Iss. |
| Aladdin Petroleum Corp.: | | | | | |
| CI67-784—Michigan Wisconsin Pipe Line Co. | Laverne | Okla | Harper | 2 15 67 | Iss. |
| CI67-1408—Pennzoil Co | Kimball | Nebr | Kanawha | 6 6 67 | Iss. |
| Alco Oil & Gas Corp.: | | | | | |
| CI67-836—Panhandle Eastern Pipe Line Co. | Richfield | Kans | Morton | 3 2 67 | Iss. |
| Edwin Allday, Operator, et al.: | | | | | |
| CI67-145—Texas Eastern Transmission Corp. | Gist Area | Tex | Newton | 2 14 67 | Iss. |
| Allegheny Land & Mineral Co.: | | | | | |
| CI67-1163—Consolidated Gas Supply Corp. | Murphy District | W. Va | Ritchie | 4 19 67 | Iss. |
| CI67-1171—Consolidated Gas Supply Corp. | Mannington District. | W. Va | Marion | 4 19 67 | Iss. |
| CI67-1351—Consolidated Gas Supply Corp. | New Milton District. | W. Va | Doddridge | 5 16 67 | Iss. |
| Amerada Petroleum Corp.: | | | | | |
| CI66-984—El Paso Natural Gas Co. | Langlie-Mattix | N. Mex | Lea | 4 6 67 | Iss. |
| CI67-66—Panhandle Eastern Pipe Line Co; | South Peek | Okla | Ellis | 3 2 67 | Iss. |
| CI67-971—Lone Star Gas Co | Peatown | Tex | Gregg | 4 6 67 | Iss. |
| CI67-972—Lone Star Gas Co | Peatown | Tex | Gregg | 4 6 67 | Iss. |
| American Petrofina Co. of Tex., Operator, et al.: | | | | | |
| G-19191—United Fuel Gas Co | Killens Ferry | La | Franklin* | 2 15 67 | Iss. |
| CI65-28—United Fuel Gas Co | Killens Ferry | La | Franklin | 2 15 67 | Iss. |
| Anadarko Production Co.: | | | | | |
| CI67-204—Panhandle Eastern Pipe Line Co. | Panoma Council Grove. | Kans | Stevens | 1 9 67 | Iss. |
| CI67-815—Panhandle Eastern Pipe Line Co. | Undesignated | Tex | Hansford | 2 15 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| **An-Son Corp.:** | | | | | |
| CI63-370—Michigan Wisconsin Pipe Line Co. | Woodward area | Okla. | Woodward | 5 22 67 | Iss. |
| CI63-547—Cities Service Gas Co. | Undesignated | Okla. | Woods | 5 24 67 | Iss. |
| CI67-663—Northern Natural Gas Co. | Mocane area | Okla. | Beaver | 2 15 67 | Iss. |
| CI67-668—Northern Natural Gas Co. | Northeast Holland | Okla. | Beaver | 1 23 67 | Iss. |
| CI67-1018—Northern Natural Gas Co. | Northeast Holland | Okla. | Beaver | 4 5 67 | Iss. |
| CI67-1020—Arkansas Louisiana Gas Co. | North Drummond | Okla. | Garfield | 4 5 67 | Iss. |
| CI67-1044—Panhandle Eastern Pipe Line Co. | South Keyes | Okla. | Cimarron | 4 5 67 | Iss. |
| CI67-1168—Northern Natural Gas Co. | Northeast Holland | Okla. | Beaver | 4 24 67 | Iss. |
| CI67-1282—Panhandle Eastern Pipe Line Co. | Northeast Sampsel | Okla. | Cimarron | 5 19 67 | Iss. |
| CI67-1298—Panhandle Eastern Pipe Line Co. | Northeast Sampsel | Okla. | Cimarron | 5 19 67 | Iss. |
| CI67-1373—Northern Natural Gas Co. | Undesignated | Okla. | Beaver | 5 24 67 | Iss. |
| **Apache Corp.:** | | | | | |
| CI61-336—El Paso Natural Gas Co. | C. E. Jones Unit[4] | Okla. | Beaver | 5 22 67 | Iss. |
| CI67-676—Northern Natural Gas Co. | Sharon West | Okla. | Woodward | 1 17 67 | Iss. |
| CI67-795—Panhandle Eastern Pipe Line Co. | Berryman | Okla. | Ellis | 2 14 67 | Iss. |
| **Apco Oil Corp.:** | | | | | |
| CI67-743—El Paso Natural Gas Co. | Basin Dakota | N. Mex. | San Juan | 2 15 67 | Iss. |
| CI67-839—Colorado Interstate Gas Co. | Mocane | Okla. | Beaver | 3 21 67 | Iss. |
| **A. L. Ares, Operator, et al.:** | | | | | |
| CS67-31—El Paso Natural Gas Co. | Jalmat Pool | N. Mex. | Lea | 3 13 67 | Iss. |
| **Arkla Exploration Co.:** | | | | | |
| CI67-752—Arkansas Louisiana Gas Co. | Erick | Okla. | Beckham | 3 2 67 | Iss. |
| **Ashland Oil & Refining Co., Operator, et al.:** | | | | | |
| CI62-1359—Tennessee Gas Pipeline Co., A Division of Tenneco Inc. | East Lake Palto | La. | Terrebonne | 3 21 67 | Iss. |
| CI67-751—Northern Natural Gas Co. | N. E. Catesby | Okla. | Ellis | 1 23 67 | Iss. |
| CI67-1098—Michigan Wisconsin Pipe Line Co. | N. E. Seiling | Okla. | Major | 4 19 67 | Iss. |
| CI67-1448—BBM Drilling Co. | Prentice | Tex. | Pecos | 6 13 67 | Iss. |
| **Atlantic Richfield Co.:** | | | | | |
| CI67-845—Panhandle Eastern Pipe Line Co. | Putnam (Lenora) | Okla. | Dewey | 4 24 67 | Iss. |
| CI67-1239—Northern Natural Gas Co. | Como | Okla. | Beaver | 5 12 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| J. W. Ayers Gas & Oil Co. by Glenn B. Keller, et al.: | | | | | |
| CI67-1258—Consolidated Gas Supply Corp. | Murphy District | W. Va. | Ritchie | 5 12 67 | Iss. |
| B H and D Co.: | | | | | |
| CS67-54—El Paso Natural Gas Co. | Spraberry | Tex. | Reagan | 6 20 67 | Iss. |
| J. C. Baker & Son, Inc.: | | | | | |
| CI67-657—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va. | Upshur | 2 14 67 | Iss. |
| CI67-1294—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va. | Upshur | 5 19 67 | Iss. |
| Lyle K. Baker, Agent: | | | | | |
| CI67-1092—Equitable Gas Co. | Short Run Community. | W. Va. | Tyler | 4 19 67 | Iss. |
| Wardie Barnett: | | | | | |
| CI67-1187—United Fuel Gas Co. | Big Creeek | Ky. | Pike | 4 19 67 | Iss. |
| Estate of George Bauerdorf: | | | | | |
| CI66-1221—Mississippi River Transmission Corp. | Hico-Knowles | La. | Lincoln | 2 15 67 | Iss. |
| Allen Beard, et al.: | | | | | |
| CI67-876—Consolidated Gas Supply Corp. | Spencer District | W. Va. | Roane | 3 13 67 | Iss. |
| Beekay Co., Inc.: | | | | | |
| C167-1052—Consolidated Gas Supply Corp. | Pleasants District | W. Va. | Barbour | 4 14 67 | Iss. |
| CI67-1189—Lone Star Gas Co. | Undesignated | Tex. | Panola | 4 24 67 | Iss. |
| Belco Petroleum Corp.: | | | | | |
| CI67-834—El Paso Natural Gas Co. | Big Piney-Labarge | Wyo. | Lincoln | 3 2 67 | Iss. |
| Benco Drilling Co., Inc., et al.: | | | | | |
| CI67-1265—Consolidated Gas Supply Corp. | Otter District | W. Va. | Braxton | 5 19 67 | Iss. |
| A. E. Bissett, et al.: | | | | | |
| CI67-258—Carnegie Natural Gas Co. | Clay District | W. Va. | Wetzel | 3 2 67 | Iss. |
| Blanco Oil Co.: | | | | | |
| CI64-857—Texas Eastern Transmission Corp. | Sal Del Rey | Tex. | Hidalgo | 4 14 67 | Iss. |
| A. B. Blankenship: | | | | | |
| CI67-572—United FuelGas Co. | Undesignated | Ky. | Martin | 12 20 67 | Iss. |
| CI67-573—United Fuel Gas Co. | Undesignated | Ky. | Martin | 12 20 67 | Iss. |
| Guy C. Boggess, et al.: | | | | | |
| CI67-545—Consolidated Gas Supply Corp. | Washington District. | W. Va. | Calhoun | 3 29 67 | Iss. |
| Sybil C. Bradford, et al.: | | | | | |
| CI67-1176—Consolidated Gas Supply Corp. | Sherman District | W. Va. | Boone | 4 19 67 | Iss. |
| Troy A. Brady, Jr.: | | | | | |
| CI67-941—Equitable Gas Co. | Skin Creek District. | W. Va. | Lewis | 3 22 67 | Rej. |
| M. W. Branum: | | | | | |
| CS67-38—Transwestern Pipeline Co. | Hamon-Ellenberger. | Tex. | Reeves | 3 13 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| W. E. Brewer, by the First Huntington National Bank: | | | | | |
| CI67-749—United Fuel Gas Co | Undesignated | Ky | Martin | 3 21 67 | Iss. |
| CI67-750—United Fuel Gas Co | Lincoln District | W. Va | Wayne | 3 21 67 | Iss. |
| CI67-756—United Fuel Gas Co | Kermit District | W. Va | Mingo | 3 29 67 | Iss. |
| CI67-757—United Fuel Gas Co | Little Elk Creek | Ky | Martin | 3 29 67 | Iss. |
| CI67-758—United Fuel Gas Co | Undesignated | Ky | Martin | 3 29 67 | Iss. |
| CI67-759—United Fuel Gas Co | Kermit District | W. Va | Mingo | 3 29 67 | Iss. |
| CI67-1091—Consolidated Gas Supply Corp | Center District* | W. Va | Gilmer | 4 14 67 | Iss. |
| CI67-1197—Consolidated Gas Supply Corp. | Glenville District | W. Va | Gilmer | 4 24 67 | Iss. |
| John Briggs: | | | | | |
| CI67-794—Northern Natural Gas Co. | Catesby* | Okla | Ellis | 2 14 67 | Iss. |
| Bright & Schiff: | | | | | |
| CI67-1261—Texas Eastern Transmission Corp. | Texam | Tex | Live Oak | 5 19 67 | Iss. |
| John Brisben, et al.: | | | | | |
| CI67-606—Oklahoma Natural Gas Gathering Corp. | Ringwood | Okla | Major | 1 23 67 | Iss. |
| Earl C. Brookover: | | | | | |
| G-10411—Panhandle Eastern Pipe Line Co. | Undesignated | Kans | Meade | 3 21 67 | Iss. |
| Charles D. Browder, Jr., Operator, et al.: | | | | | |
| CI67-755—United Fuel Gas Co | Ellis | La | Acadia | 1 23 67 | Iss. |
| Elizabeth M. Brown, et al.: | | | | | |
| G-4592—United Gas Pipe Line Co. | Hordes Creek | Tex | Goliad | 3 21 67 | Iss. |
| G-4593—United Gas Pipe Line Co. | Hordes Creek | Tex | Goliad | 3 21 67 | Iss. |
| G-4594—Transcontinental Gas Pipe Line Corp. | Lagloria | Tex | Jim Wells* | 3 21 67 | Iss. |
| G-4595—United Gas Pipe Line Co. | Hordes Creek | Tex | Goliad | 3 21 67 | Iss. |
| G-9255—Natural Gas Pipeline Co. of America. | Lagloria | Tex | Jim Wells* | 3 21 67 | Iss. |
| G-17945—El Paso Natural Gas Co. | Spraberry Trend Area. | Tex | Reagan | 3 21 67 | Iss. |
| G-19673—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | West Mission | Tex | Hidalgo | 3 21 67 | Iss. |
| CS67-68—United Gas Pipe Line Co.* | Undesignated | Tex* | Goliad* | 5 23 67 | Iss. |
| George R. Brown, Operator, et al.: | | | | | |
| CI67-1002—Texas Eastern Transmission Corp. | North Panther Reef. | Tex | Calhoun | 4 5 67 | Iss. |
| Harry W. Brunt, et al.: | | | | | |
| CI67-991—The Manufacturers Light and Heat Co. | Brush Valley Township. | Pa | Indiana | 4 6 67 | Iss. |
| Charles T. Bryner: | | | | | |
| CI67-1153—The Manufacturers Light and Heat Co. | North Strabane | Pa | Washington | 4 19 67 | Iss. |
| David E. Bunting, et al.: | | | | | |
| CI67-887—Consolidated Gas Supply Corp. | Troy District | W. Va | Gilmer | 3 21 67 | Iss. |
| W. E. Burchett: | | | | | |
| CI67-990—United Fuel Gas Co | Undesignated | W. Va | Mingo | 4 6 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION [1] |
|---|---|---|---|---|---|
| C. I. West Virginia Corp.: | | | | | |
| CI67-1117—Cabot Corp. | Reedy District | W. Va. | Wirt | 4 19 67 | Iss. |
| Francis E. Cain, et al.: | | | | | |
| CI67-873—Consolidated Gas Supply Corp. | Murphy District | W. Va. | Ritchie | 3 13 67 | Iss. |
| CI67-925—Consolidated Gas Supply Corp. | Center District | W. Va. | Calhoun | 3 21 67 | Iss. |
| Calvert-Mid America, Inc.: | | | | | |
| CI66-10—Michigan Wisconsin Pipe Line Co. | Laverne | Okla. | Harper | 5 12 67 | Iss. |
| CI67-664—Arkansas Louisiana Gas Co. | Southeast Stigler | Okla. | Haskell | 1 9 67 | Iss. |
| Camerina Petroleum Corp., et al.: | | | | | |
| CI67-717—Northern Natural Gas Co. | Undesignated | Okla. | Harper | 1 17 67 | Iss. |
| Car-Tex Producing, Operator: | | | | | |
| CI66-554—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Undesignated | Tex. | Panola | 4 6 67 | Iss. |
| Cayman Corp.: | | | | | |
| CI67-685—Pennsylvania Gas Co. | Hamilton | Pa. | McKean | 1 17 67 | Iss. |
| Central Gas Co., et al.: | | | | | |
| CI67-1049—Consolidated Gas Supply Corp. | Sheridan District | W. Va. | Calhoun | 4 5 67 | Iss. |
| Chambers & Kennedy: | | | | | |
| CS67-41—West Texas Gathering Co. | Hunt-Bagget | Tex. | Crockett | 3 13 67 | Iss. |
| Joe N. Champlin: | | | | | |
| CI67-1224—Michigan Wisconsin Pipe Line Co. | Laverne | Okla. | Harper | 5 16 67 | Iss. |
| Joe N. Champlin, Trustee: | | | | | |
| CI67-958—Panhandle Eastern Pipe Line Co. | Woodward Area | Okla. | Dewey | 3 29 67 | Iss. |
| Chandler & Associates, Inc., Operator, et al.: | | | | | |
| CI67-1300—Colorado Interstate Gas Co. | Patrick Drew | Wyo. | Sweetwater | 5 19 67 | Iss. |
| Chandler-Simpson, Inc., et al.: | | | | | |
| CI67-1182—El Paso Natural Gas Co. | Mickelson Creek Unit. | Wyo. | Sublette | 4 19 67 | Iss. |
| Chester Oil Co.: | | | | | |
| CI67-599—Michigan Wisconsin Pipe Line Co. | Laverne | Okla. | Harper | 1 17 67 | Iss. |
| Earl Clayton, Operator, et al.: | | | | | |
| CI67-857—Phillips Petroleum Co. | West Panhandle | Tex. | Gray | 4 19 67 | Iss. |
| Coastal States Gas Producing Co.: | | | | | |
| CI67-460—Lone Star Gas Co. | Nellie District North. | Okla. | Stephens | 2 15 67 | Iss. |
| Cologne Production Co., Agent: | | | | | |
| CI67-515—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Cologne | Tex. | Victoria | 3 2 67 | Iss. |
| Columbian Fuel Corp., et al.: | | | | | |
| CI67-824—Consolidated Gas Supply Corp. | Undesignated | Pa. | Jefferson | 3 2 67 | Iss. |
| Conroy, Inc., Operator, et al.: | | | | | |
| CI67-626—Kansas-Nebraska Natural Gas Co., Inc. | North Shore | Colo. | Logan | 5 12 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| E. Constantin, Jr.: | | | | | |
| CI67-893—Northern Natural Gas Co. | Perryton Upper Morrow. | Tex | Ochiltree | 3 21 67 | Iss. |
| CS67-73—Texas Eastern Transmission Corp. | Freemans Creek | W. Va | Goliad | 6 22 67 | Iss. |
| Continental Oil Co.: | | | | | |
| CI67-514—El Paso Natural Gas Co. | Justis | N. Mex | Lea | 4 6 67 | Iss. |
| Cornell Oil Co.: | | | | | |
| CS67-49—Natural Gas Pipeline Co. of America. | Wasson | Tex | Yoakum | 4 25 67 | Iss. |
| Emmett Cronin, Agent: | | | | | |
| CI67-1118—Cabot Corp | Murphy District | W. Va | Ritchie | 4 19 67 | Iss. |
| Crystal Oil & Land Co., Operator, et al.: | | | | | |
| CI67-1290—Texas Gas Transmission Corp. | Ruston | La | Lincoln | 5 19 67 | Iss. |
| CI67-1355—United Gas Pipe Line Co. | Greenwood-Waskom Area. | La | Caddo | 5 24 67 | Iss. |
| E. A. Culbertson & Wallace W. Irwin: | | | | | |
| CS67-58—El Paso Natural Gas Co. | Undesignated | N. Mex | Lea | 5 23 67 | Iss. |
| Cumberland Gas Co.: | | | | | |
| G-3245—Pennzoil Co.* | Lincoln | W. Va | Lincoln | 10 17 67 | Iss. |
| Dallas Resources, Inc., Operator, et al.: | | | | | |
| CI61-1567—Florida Gas Transmission Co. | North Appling | Tex | Calhoun | 5 12 67 | Iss. |
| Davis Drlg., Inc., Operator, et al.: | | | | | |
| CI67-744—Colorado Interstate Gas Co. | Greenwood | Kans | Morton | 3 29 67 | Iss. |
| Delta Corp.: | | | | | |
| CI67-615—Natural Gas Pipeline Co. of America | Camrick | Okla | Beaver | 3 21 67 | Iss. |
| CI67-852—Michigan Wisconsin Pipe Line Co. | Laverne | Okla | Harper | 4 19 67 | Iss. |
| Delta Drilling Co., Operator, et al.: | | | | | |
| CI66-482—Northern Natural Gas Co. | Maybin Ranch Area. | Tex | Crockett | 4 6 67 | Iss. |
| Delta Producing Corp.: | | | | | |
| CI62—60—United Fuel Gas Co | Union District | W. Va | Clay | 2 14 67 | Iss. |
| CI67-1047—Consolidated Gas Supply Corp. | Glenville District | W. Va | Gilmer | 4 5 67 | Iss. |
| Depco, Inc.: | | | | | |
| CS67-16—Natural Gas Pipeline Co. of America. | Indian Basin | N.Mex | Eddy | 1 17 67 | Iss. |
| Despot, Inc.: | | | | | |
| CI67—1276—United Gas Pipe Line Co. | Bancroft | La | Beauregard | 5 19 67 | Iss. |
| Development Services Corp., Operator, et al.: | | | | | |
| CI66-1343—Mountain Fuel Supply Co. | Pole Gulch Unit | Colo | Moffat | 5 19 67 | Iss. |
| Diamond Alkali Co.: | | | | | |
| CI67-1354—Northern Natural Gas Co. | Sheetz Unit | Kans | Meade | 5 16 67 | Iss. |
| John T. Diederich: | | | | | |
| CI67-442—United Fuel Gas Co | Undesignated | Ky | Martin | 12 6 67 | Iss. |
| CI67-443—United Fuel Gas Co | Undesignated | Ky | Martin | 12 6 67 | Iss. |
| CI67-444—United Fuel Gas Co | Undesignated | Ky | Martin | 12 6 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Dixon Oil & Gas Co.: | | | | | |
| CI67-660—United Fuel Gas Co. | Undesignated | W.Va. | Mingo | 1 9 67 | Iss. |
| Victor E. Doman, Agent: | | | | | |
| CI67-964—The Manufacturers Light and Heat Co. | Undesignated | Pa. | Greene | 5 24 67 | Iss. |
| Robert Donnell: | | | | | |
| CI67-793—El Paso Natural Gas Co. | Canyon Largo Pictured Cliffs. | N. Mex. | Rio Arriba | 2 15 67 | Iss. |
| Drevzoil, Inc., et al.: | | | | | |
| CI67-1429—Union Texas Petroleum. | East Finley Township. | Pa. | Motley | 6 13 67 | Iss. |
| Thomas A. Dugan: | | | | | |
| CI62-29—El Paso Natural Gas Co. | Basin Dakota | N. Mex. | San Juan | 3 2 67 | Iss. |
| CI67-692—El Paso Natural Gas Co. | Gallup* | N. Mex. | San Juan | 1 23 67 | Iss. |
| Dumalt, Inc.: | | | | | |
| CI67-832—Cumberland & Allegheny Gas Co. | Hacker's Creek District. | W. Va. | Lewis | 3 2 67 | Iss. |
| CI67-833—Cumberland & Allegheny Gas Co. | Hacker's Creek District. | W. Va. | Lewis | 3 2 67 | Iss. |
| Dunn-Mar Oil & Gas Co.: | | | | | |
| CI67-1067—The Manufacturers Light and Heat Co. | Cumberland Township. | Pa. | Greene | 4 19 67 | Iss. |
| CI67-1068—The Manufacturers Light and Heat Co. | Morris Township | Pa. | Greene | 4 19 67 | Iss. |
| CI67-1069—The Manufacturers Light and Heat Co. | Grey Township | Pa. | Greene | 4 19 67 | Iss. |
| CI67-1070—The Manufacturers Light and Heat Co. | Aleppo Township* | Pa.* | Greene* | 4 19 67 | Iss. |
| Eastern Kentucky Exploration Co. by Clara Queen: | | | | | |
| CI67-653—United Fuel Gas Co. | Undesignated | Ky. | Martin | 4 6 67 | Iss. |
| El Paso Products Co.: | | | | | |
| CI67-1365—Northern Natural Gas Co. | Chaney South* | Okla. | Ellis | 5 24 67 | Iss. |
| Benjamin Elenbogen: | | | | | |
| CI67-848—El Paso Natural Gas Co. | Ballard-Pictured Cliffs Pool. | N. Mex. | Sandoval | 3 2 67 | Iss. |
| Davis M. Elkins: | | | | | |
| G-8506—United Fuel Gas Co. | Geary District | W. Va. | Roane | 3 2 67 | Iss. |
| Empire Development Corp., Inc.: | | | | | |
| CI67-1469—El Paso Natural Gas Co. | Murphy District | W. Va. | Glasscock | 6 26 67 | Iss. |
| Frank Etzel, Jr., et al.: | | | | | |
| CI67-1240—Pennsylvania Gas Co. | Cherry Grove Township. | Pa. | Warren | 5 12 67 | Iss. |
| Edward Colton Evensen, et al.: | | | | | |
| CI67-1229—El Paso Natural Gas Co. | Blanco Mesa Verde Pool. | N. Mex. | San Juan | 5 12 67 | Iss. |
| Exploration & Development, Inc.: | | | | | |
| CI67-1260—Kansas-Nebraska Natural Gas Co., Inc. | Bradshaw | Kans. | Hamilton | 5 19 67 | Iss. |
| Sanford P. Fagadau, Operator: | | | | | |
| CI67-722—Lone Star Gas Co. | Blue Grove | Tex. | Clay | 1 23 67 | Iss. |
| Fair Oil Co., Operator, et al.: | | | | | |
| CI67-695—Arkansas Louisiana Gas Co. | Excelsior | Tex. | Marion | 2 15 67 | Iss. |
| Faith Natural Gas Co.: | | | | | |
| CI67-956—The Manufacturers Light and Heat Co. | McElroy District | W. Va. | Tyler | 4 5 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Falcon Seaboard Drilling Co.: | | | | | |
| CI67-779—Panhandle Eastern Pipe Line Co. | Northeast Waynoka | Okla | Woods | 2 15 67 | Iss. |
| Helen H. Feldman, et al.: | | | | | |
| CI66-1273—Mississippi River Transmission Corp. | Hico-Knowles | La | Lincoln | 2 15 67 | Iss. |
| Felmont Oil Corp.: | | | | | |
| CI67-689—Consolidated Gas Supply Corp. | Shippen | Pa | Cameron | 1 17 67 | Iss. |
| CI67-691—Consolidated Gas Supply Corp.* | Undesignated | Pa | Bedford | 1 17 67 | Iss. |
| Willard E. Ferrell, Agt. for Bear Run Development: | | | | | |
| CI67-679—Equitable Gas Co | Union District | W. Va | Ritchie | 1 9 67 | Iss. |
| CI67-942—Equitable Gas Co | Union District | W. Va | Ritchie | 4 5 67 | Iss. |
| George Finnegan: | | | | | |
| CI67-1397—El Paso Natural Gas Co. | Richill Township | Pa | Greene | 6 27 67 | Iss. |
| Fire Oil & Gas Co.: | | | | | |
| CI67-1280—United Fuel Gas Co | Laurel Hill District | W. Va | Lincoln | 5 19 67 | Iss. |
| Martha Fordyce: | | | | | |
| CI67-1063—The Manufacturers Light and Heat Co. | South Franklin Township | Pa | Washington | 4 19 67 | Iss. |
| Foster Petroleum Corp.; | Homer | Okla | Garfield | 1 9 67 | Iss. |
| CI67-650—Arkansas Louisiana Gas Co. | | | | | |
| CI67-929—Oklahoma Natural Gas Gathering Corp. | Ringwood | Okla | Major | 3 29 67 | Iss. |
| James O. Fox Jr., Operator, et al.: | | | | | |
| CS67-26—Transwestern Pipeline Co. | Undesignated | Tex | Winkler | 5 4 67 | Iss. |
| John Franks, Operator, et al.: | | | | | |
| CI67-1034—Arkansas Louisiana Gas Co. | Northwest Colquit | La | Claiborne | 4 5 67 | Iss. |
| Frying Pan Oil & Gas Co.: | | | | | |
| CI67-1281—United Fuel Gas Co | Laurel Hill District | W. Va | Lincoln | 5 19 67 | Iss. |
| R. H. Fulton: | | | | | |
| CS67-34—Transwestern Pipeline Co. | Hamon Ellenburger. | Tex | Reeves | 3 1 67 | Iss. |
| General Petroleum Corp., et al.: | | | | | |
| CI67-1089—El Paso Natural Gas Co. | Basin Dakota | N. Mex | San Juan | 4 19 67 | Iss. |
| Adolph Gill, et al., d/b/a Gilco Oil & Gas, Ltd.: | | | | | |
| CI67-904—Consolidated Gas Supply Corp. | Freemans Creek District. | W. Va | Lewis | 3 21 67 | Iss. |
| C. G. Glasscock, Jr.: | | | | | |
| G-8743—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Captain Lucy (Benton). | Tex | Nueces | 4 6 67 | Iss. |
| George D. Gould, Trustee: | | | | | |
| CS67-30—El Paso Natural Gas Co. | Undesignated | Tex | Upton | 4 25 67 | Iss. |
| Graham-Michaelis Drilling Co.: | | | | | |
| CI67-838—Northern Natural Gas Co. | Como | Okla | Beaver | 3 2 67 | Iss. |
| Great Yellowstone Corp., Operator, et al.: | | | | | |
| CI67-761—Panhandle Eastern Pipe Line Co. | Mocane | Okla | Beaver | 2 15 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Greenbrier 64 Limited: | | | | | |
| CS67-39—Transwestern Pipeline Co. | Undesignated | Tex | Reeves | 3 13 67 | Iss. |
| Clarence Grueser, et al.: | | | | | |
| CI67-730—The Ohio Fuel Gas Co. | Sutton Township | Ohio | Meigs | 3 29 67 | Iss. |
| Joseph S. Gruss, Operator, et al.: | | | | | |
| CI63-1211—El Paso Natural Gas Co. | Spraberry Trend Area. | Tex | Upton | 5 24 67 | Iss. |
| CI64-820—El Paso Natural Gas Co. | Spraberry Trend Area. | Tex | Upton | 5 24 67 | Iss. |
| CI65-753—El Paso Natural Gas Co. | Spraberry Trend Area. | Tex | Upton | 5 24 67 | Iss. |
| CI65-941—El Paso Natural Gas Co. | Spraberry Trend Area. | Tex | Upton | 5 24 67 | Iss. |
| CI65-948—El Paso Natural Gas Co. | Spraberry Trend Area. | Tex | Upton | 5 24 67 | Iss. |
| CI67-735—El Paso Natural Gas Co. | Spraberry Trend Area. | Tex | Upton | 3 2 67 | Iss. |
| CI67-778—United Fuel Gas Co | Walton District | W. Va | Roane | 2 15 67 | Iss. |
| Gulf Oil Corp.: | | | | | |
| CI65-468—Transwestern Pipeline Co. | San Hill San Andres. | Tex | Crane | 2 2 67 | Wtd. |
| CI65-898—Panhandle Eastern Pipe Line Co. | Northwest Oakdale. | Okla | Woods | 3 29 67 | Iss. |
| CI67-324—Michigan Wisconsin Pipe Line Co. | Northwest Lovedale. | Okla | Harper* | 2 15 67 | Iss. |
| CI67-721—Lone Star Gas Co | Danville | Tex | Gregg | 1 13 67 | Rej. |
| CI67-742—El Paso Natural Gas Co. | Midway Lane | Tex | Crockett | 3 2 67 | Iss. |
| CI67-787—Panhandle Eastern Pipe Line Co. | Southwest Liberal Light. | Okla | Beaver | 2 14 67 | Iss. |
| CI67-803—El Paso Natural Gas Co. | Langlie-Mattix | N. Mex | Lea | 5 24 67 | Iss. |
| CI67-814—Panhandle Eastern Pipe Line Co. | North Gruver | Tex | Hansford | 2 15 67 | Iss. |
| CI67-846—El Paso Natural Gas Co. | Wilshire Devonian | Tex | Upton | 3 29 67 | Iss. |
| CI67-890—Northern Natural Gas Co. | Catesby* | Okla | Ellis | 3 21 67 | Iss. |
| CI67-1055—Natural Gas Pipeline Co. of America. | South Perryton | Tex | Ochiltree | 4 14 67 | Iss. |
| CI67-1174—Northern Natural Gas Co. | Killebrew | Tex | Roberts | 4 19 67 | Iss. |
| Jack Gumm: | | | | | |
| CI63-1284—Consolidated Gas Supply Corp. | Glenville District | W. Va | Doddridge | 6 13 67 | Iss. |
| Carl E. Gungoll, et al.: | | | | | |
| CI67-765—Oklahoma Natural Gas Gathering Corp. | Ringwood Area | Okla | Major | 3 29 67 | Iss. |
| P. P. Gunn: | | | | | |
| CI64-856—United Fuel Gas Co | Henry District | W. Va | Clay | 2 14 67 | Iss. |
| CI67-947—Consolidated Gas Supply Corp. | Murphy District | W. Va | Ritchie | 3 29 67 | Iss. |
| CI67-1090—Consolidated Gas Supply Corp. | Murphy District | W. Va | Ritchie | 4 14 67 | Iss. |
| Haas Brothers: | | | | | |
| CI67-1166—United Gas Pipe Line Co. | Blanconia | Tex | Bee | 4 19 67 | Iss. |
| George W. Hale: | | | | | |
| CI67-574—United Fuel Gas Co | Kermit District | W. Va | Mingo | 12 20 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION [1] |
|---|---|---|---|---|---|
| Hall-Jones Oil Corp., Operator, et al.: | | | | | |
| CI67-823—Arkansas Louisiana Gas Co. | Arkoma | Okla | Latimer | 3 2 67 | Iss. |
| CI67-944—Panhandle Eastern Pipe Line Co. | Keys | Okla | Cimarron | 3 29 67 | Iss. |
| Jake L. Hamon: | | | | | |
| CI67-776—Arkansas Louisiana Gas Co. | Arkoma | Okla | Le Flore | 2 15 67 | Iss. |
| CI67-1054—Arkansas Louisiana Gas Co. | Kinta | Okla | Sequoyah | 4 14 67 | Iss. |
| Hanlon Oil Co.: | | | | | |
| CI67-1180—Consolidated Gas Supply Corp. | Union District* | W. Va | Ritchie | 4 19 67 | Iss. |
| Charles O. Hardey: | | | | | |
| CI67-748—United Gas Pipe Line Co. | Sibley | La | Webster | 1 23 67 | Iss. |
| CI67-754—United Gas Pipe Line Co. | Sibley | La | Webster | 1 23 67 | Iss. |
| E. T. Harkins: | | | | | |
| CI67-22—El Paso Natural Gas Co. | Spraberry | Tex | Upton | 1 24 67 | Iss. |
| Dewey Harris, et al.: | | | | | |
| CI67-724—Cumberland & Allegheny Gas Co. | Buckhannon | W. Va | Upshur | 1 23 67 | Iss. |
| Jay J. Harris: | | | | | |
| CI67-1253—El Paso Natural Gas Co. | Ballard-Pictured Cliffs. | N. Mex | Rio Arriba | 5 12 67 | Iss. |
| Neva L. Harris, et al.: | | | | | |
| CI67-957—Northern Natural Gas Co. | Mocane-Laverne | Okla | Beaver | 3 29 67 | Iss. |
| Harvest Queen Mill & Elevator Co.: | | | | | |
| CI61-728—Panhandle Eastern Pipe Line Co. | Plains Townsite | Kans | Meade | 5 12 67 | Iss. |
| Waldo M. Hatch, Agt. for Elswick Development Progress: | | | | | |
| CI67-728—United Fuel Gas Co | Undesignated | Ky | Pike | 1 23 67 | Iss. |
| CI67-733—United Fuel Gas Co | Undesignated | Ky | Pike | 1 23 67 | Iss. |
| Hays and Co., Agent for M. C. Carpenter, et al.: | | | | | |
| CI67-655—Equitable Gas Co | Birch | W. Va | Braxton | 1 9 67 | Iss. |
| CI67-656—Equitable Gas Co | Birch | W. Va | Braxton | 1 9 67 | Iss. |
| CI67-697—Cumberland & Allegheny Gas Co. | Freeman's Creek | W. Va | Lewis | 1 17 67 | Iss. |
| CI67-698—Cumberland & Allegheny Gas Co. | Buckhannon | W. Va | Upshur | 1 17 67 | Iss. |
| Hays and Co., Agent for David W. Law: | | | | | |
| CI67-699—Cumberland & Allegheny Gas Co. | Freeman's Creek | W. Va | Lewis | 1 17 67 | Iss. |
| CI67-700—Cumberland & Allegheny Gas Co. | Freeman's Creek | W. Va | Lewis | 1 17 67 | Iss. |
| CI67-701—Cumberland & Allegheny Gas Co. | Freeman's Creek | W. Va | Lewis | 1 17 67 | Iss. |
| CI67-702—Cumberland & Allegheny Gas Co. | Freeman's Creek | W. Va | Lewis | 1 17 67 | Iss. |
| CI67-703—Cumberland & Allegheny Gas Co. | Freeman's Creek | W. Va | Lewis | 1 17 67 | Iss. |
| CI67-704—Cumberland & Allegheny Gas Co. | Freeman's Creek | W. Va | Lewis | 1 17 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Hays and Co., Agent for David W. Law—Continued | | | | | |
| CI67-705—Cumberland & Allegheny Gas Co. | Buckhannon | W. Va. | Upshur | 1 17 67 | Iss. |
| CI67-709—Cumberland & Allegheny Gas Co. | Union | W. Va. | Barbour | 1 17 67 | Iss. |
| CI67-710—Cumberland & Allegheny Gas Co. | Union | W. Va. | Barbour | 1 17 67 | Iss. |
| CI67-711—Cumberland & Allegheny Gas Co. | Union | W. Va. | Barbour | 1 17 67 | Iss. |
| CI67-712—Cumberland & Allegheny Gas Co. | Union | W. Va. | Barbour | 1 17 67 | Iss. |
| CI67-716—Equitable Gas Co. | Grant | W. Va. | Doddrige | 1 17 67 | Iss. |
| CI67-1210—Consolidated Gas Supply Corp. | Parkersburg | W. Va. | Wood | 4 24 67 | Iss. |
| CI67-1255—Consolidated Gas Supply Corp. | Murphy District | W. Va. | Ritchie | 5 12 67 | Iss. |
| W. M. Heeter Lumber Co.: | | | | | |
| CI67-1038—The Manufacturers Light and Heat Co. | Undesignated | Pa. | Armstrong | 5 12 67 | Iss. |
| John Hershberger: | | | | | |
| CI67-1099—The Manufacturers Light and Heat Co. | Nicholson | Pa. | Fayette | 4 25 67 | Rej. |
| Robert F. Hicks: | | | | | |
| CI67-23—El Paso Natural Gas Co. | Spraberry | Tex. | Upton | 1 24 67 | Iss. |
| John H. Hill, Operator, et al.: | | | | | |
| CI67-1247—Northern Natural Gas Co. | Doby Springs | Okla. | Harper | 5 12 67 | Iss. |
| Carl Hinkle: | | | | | |
| CI66-1015—Carnegie Natural Gas Co. | Centerville District | W. Va. | Tyler | 5 12 67 | Iss. |
| Joe Hobson & Judith D. Archer, Trustees: | | | | | |
| CI67-658—Baca Gas Gathering System, Inc. | Southeast Gage | Okla. | Baca | 6 26 67 | Iss. |
| The Wilbur J. Holleman Trust: | | | | | |
| CI67-562—Natural Gas Pipeline Co. of America. | South Taloga | Okla. | Deney | 1 17 67 | Iss. |
| Homestead Oil & Gas Co., Inc: | | | | | |
| CI67-1262—The Manufacturers Light and Heat Co. | Aleppo Township | Pa. | Greene | 5 19 67 | Iss. |
| CI67-1263—The Manufacturers Light and Heat Co. | Aleppo Township | Pa. | Greene | 5 19 67 | Iss. |
| Horizon Oil & Gas Co. of Tex: | | | | | |
| G-19293—Panhandle Eastern Pipe Line Co. | Wildcat | Tex. | Hansford | 4 19 67 | Iss. |
| Houston Royalty Co., Operator, et al.: | | | | | |
| CI64-847—Texas Eastern Transmission Corp. | East Melrose* | Tex. | Goliad | 2 15 67 | Iss. |
| CI64-869—Texas Eastern Transmission Corp. | West Weesatche | Tex. | Goliad | 2 15 67 | Iss. |
| CI64-1391—Texas Eastern Transmission Corp. | West Weesatche | Tex. | Goliad | 2 15 67 | Iss. |
| CI67-766—United Gas Pipe Line Co. | South Weesatche | Tex. | Goliad | 2 15 67 | Iss. |
| CI67-767—United Gas Pipe Line Co. | South Weesatche | Tex. | Goliad | 2 15 67 | Iss. |
| CI67-879—United Gas Pipe Line Co. | GoWitt | Tex. | Goliad-DeWitt | 3 13 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| J. M. Huber Corp.: | | | | | |
| CI67-11—Panhandle Eastern Pipe Line Co. | Mocane | Okla | Beaver | 3 21 67 | Iss. |
| Edward R. Hudson, Jr. & William A. Hudson II, et al.: | | | | | |
| CS67-32—Transwestern Pipeline Co. | Undesignated | Tex | Reeves | 3 13 67 | Iss. |
| James A. Hughes, et al.: | | | | | |
| CI67-774—Cumberland & Allegheny Gas Co. | Washington District | W. Va | Upshur | 2 15 67 | Iss. |
| Huisache Operating Co.: | | | | | |
| CI67-871—Banquete Gas Co., a Division of Crestmont Oil & Gas Co. | East Plymouth | Tex | San Patricio | 5 12 67 | Iss. |
| Humble Oil & Refining Co.: | | | | | |
| CI65-606—Northern Natural Gas Co. | Gomez | Tex | Pecos | 5 12 67 | Iss. |
| CI67-83—Plaquemines Oil & Gas Co., Inc. | Potash | La | Plaquemines | 1 10 67 | Rej. |
| CI67-596—Oklahoma Natural Gas Gathering Corp. | Ringwood Area | Okla | Major | 2 15 67 | Iss. |
| CI67-659—United Gas Pipe Line Co. | Neches | Tex | Cherokee | 1 9 67 | Iss. |
| CI67-835—Lumar Gas Corp | Midway | Tex | San Patricio | 3 2 67 | Iss. |
| CI67-952—United Gas Pipe Line Co. | West Bryceland | La | Bienville | 5 12 67 | Iss. |
| CI67-1014—Plaquemines Oil & Gas Co., Inc. | Potash | La | Plaquemines | 4 5 67 | Iss |
| CI67-1104—Arkansas Louisiana Gas Co. | Kinta | Okla | Latimer* | 4 14 67 | Iss. |
| CI67-1325—El Paso Natural Gas Co. | Spraberry Trend | Tex | Upton | 5 24 67 | Iss. |
| CI67-1371—United Gas Pipe Line Co. | Karen Beavchamp | Tex | Goliad | 5 24 67 | Jss. |
| Mrs. Monte Riley Hurst: | | | | | |
| CI67-800—El Paso Natural Gas Co. | Undesignated | Okla | Beckham | 1 17 67 | Rej. |
| Hydrocarbon Chemicals, Inc.: | | | | | |
| CI67—644—Cumberland & Allegheny Gas Co. | Valley | W. Va | Barbour | 1 9 67 | Iss. |
| CI67-645—Cumberland & Allegheny Gas Co. | Union | W. Va | Upshur | 1 9 67 | Iss. |
| CI67-646—Cumberland & Allegheny Gas Co. | Union | W. Va | Upshur | 1 9 67 | Iss. |
| CI67-647—Cumberland & Allegheny Gas Co. | Union | W. Va | Upshur | 1 9 67 | Iss. |
| CI67-648—Cumberland & Allegheny Gas Co. | Union | W. Va | Upshur | 1 9 67 | Iss. |
| CI67-649—Cumberland & Allegheny Gas Co. | Union | W. Va | Upshur | 1 9 67 | Iss. |
| H. L. Ice, et al., d/b/a Ice-Mossor, et al.: | | | | | |
| CI67-953—Consolidated Gas Supply Corp. | McCellan District | W. Va | Doddridge | 3 29 67 | Iss. |
| J. J. Enterprises, Inc.; | | | | | |
| CI67-1254—Consolidated Gas Supply Corp. | Warren District | W. Va | Upshur | 5 12 67 | Iss. |
| CI67-1340—Cumberland & Allegheny Gas Co. | Union District | W. Va | Upshur | 5 16 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION [1] |
|---|---|---|---|---|---|
| J. J. Enterprises, Inc.—Continued | | | | | |
| CI67-1341—Cumberland & Allegheny Gas Co. | Union District | W. Va. | Barbour | 5 16 67 | Iss. |
| CI67-1342—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va. | Upshur | 5 16 67 | Iss. |
| CI67-1343—Cumberland & Allegheny Gas Co. | Union District | W. Va. | Barbour | 5 16 67 | Iss. |
| CI67-1344—Cumberland & Allegheny Gas Co. | Union District | W. Va. | Barbour | 5 16 67 | Iss. |
| CI67-1345—Cumberland & Allegheny Gas Co. | Warren District | W. Va. | Upshur | 5 16 67 | Iss. |
| CI67-1346—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va. | Upshur | 5 16 67 | Iss. |
| CI67-1347—Cumberland & Allegheny Gas Co. | Union District | W. Va. | Barbour | 5 16 67 | Iss. |
| CI67-1348—Cumberland & Allegheny Gas Co. | Union District | W. Va. | Barbour | 5 16 67 | Iss. |
| CI67-1413—Equitable Gas Co. | Jacksonville | Pa. | Lewis | 6 6 67 | Iss. |
| J-W Operating Co.: | | | | | |
| CI67-1083—Texas Gas Transmission Corp. | Northeast Lisbon | La. | Claiborne | 5 12 67 | Iss. |
| Jackson River Oil Co.: | | | | | |
| CI67-52—Consolidated Gas Supply Corp. | Sherman District | W. Va. | Calhoun | 5 12 67 | Iss. |
| Jamaco Properties, Inc., Operator, et al.: | | | | | |
| CI67-1108—United Fuel Gas Co. | Union District | W. Va. | Kanawha | 4 14 67 | Iss. |
| James Drilling Corp.: | | | | | |
| CI67-1317—The Manufacturers Light and Heat Co. | Undesignated | Pa. | Westmoreland | 5 1 67 | Rej. |
| Fred Jones: | | | | | |
| CI67-1097—El Paso Natural Gas Co. | Basin Dakota Pool. | N. Mex. | San Juan | 4 14 67 | Iss. |
| Jones & Pellow Oil Co., et al.: | | | | | |
| CI67-983—Panhandle Eastern Pipe Line Co. | Undesignated | Okla. | Dewey | 4 19 67 | Iss. |
| CI67-995—Panhandle Eastern Pipe Co. | Southeast Arnett | Okla. | Ellis | 4 19 67 | Iss. |
| CI67-1073—Michigan Wisconsin Pipe Line Co. | Woodward Area | Okla. | Dewey | 5 12 67 | Iss. |
| Ray A. Jones, et al.: | | | | | |
| CI63-980—Consolidated Gas Supply Corp. | Glenville District | W. Va. | Gilmer | 2 14 67 | Iss. |
| Jowoco, Inc.: | | | | | |
| CI67-677—Arkansas Louisiana Gas Co. | Greenwood-Waskom. | La. | Caddo | 1 9 67 | Iss. |
| James V. Joyce: | | | | | |
| CI66-718—Consolidated Gas Supply Corp. | Spring Creek District. | W. Va. | Wirt | 3 29 67 | Iss. |
| Raymond W. Kalb, et al.: | | | | | |
| CI67-1218—The Manufacturers Light and Heat Co. | Warsaw Township | Pa. | Jefferson | 4 24 67 | Iss. |
| CI67-1219—The Manufacturers Light and Heat Co. | Warsaw Township | Pa. | Jefferson | 4 24 67 | Iss. |
| CI67-1220—The Manufacturers Light and Heat Co. | Warsaw Township | Pa. | Jefferson | 4 24 67 | Iss. |
| CI67-1221—The Manufacturers Light & Heat Co. | Warsaw Township | Pa. | Jefferson | 4 24 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| David Kamenstein: | | | | | |
| CI67-684—Northern Natural Gas Co. | Northwest Lovedale. | Okla. | Harper | 1 9 67 | Iss. |
| Raymond B. Keating, Ancillary Trustee, et al.: | | | | | |
| CI67-898—Northern Natural Gas Co. | Northwest Lovedale. | Okla. | Harper | 3 21 67 | Iss. |
| Keener Oil Co.: | | | | | |
| CI67-970—Northern Natural Gas Co. | Southeast Catesby*. | Okla. | Ellis | 4 6 67 | Iss. |
| Dow L. Keever: | | | | | |
| CI67-889—El Paso Natural Gas Co. | East Panhandle | Tex. | Wheeler | 4 14 67 | Iss. |
| Michael V. Kelly, Operator, et al.: | | | | | |
| CI67-855—United Gas Pipe Line Co. | Undesignated | Tex. | Fort Bend | 3 13 67 | Iss. |
| CI67-950—El Paso Natural Gas Co. | Pictured Cliffs | N. Mex. | San Juan | 4 5 67 | Iss. |
| Kerr-McGee Corp., Operator, et al.: | | | | | |
| CI67-1474—United Gas Pipe Line Co. | Union District | W. Va. | Simpson | 6 26 67 | Iss. |
| Kewanee Oil Co.: | | | | | |
| G-3709—Arkansas Louisiana Gas Co. | North Lansing | Tex. | Harrison | 5 19 67 | Iss. |
| G-3793—Arkansas Louisiana Gas Co. | North Lansing | Tex. | Harrison | 5 19 67 | Iss. |
| G-3794—Arkansas Louisiana Gas Co. | North Lansing | Tex. | Harrison | 5 19 67 | Iss. |
| G-3795—Arkansas Louisiana Gas Co. | North Lansing | Tex. | Harrison | 5 19 67 | Iss. |
| G-3796—Arkansas Louisiana Gas Co. | Willow Springs | Tex. | Gregg | 5 19 67 | Iss. |
| G-3797—Arkansas Louisiana Gas Co. | North Lansing | Tex. | Harrison | 5 19 67 | Iss. |
| G-3798—Arkansas Louisiana Gas Co. | North Lansing | Tex. | Harrison | 5 19 67 | Iss. |
| CI60-448—Transwestern Pipeline Co. | Lipscomb | Tex. | Lipscomb | 5 19 67 | Iss. |
| CI63-1414—Michigan Wisconsin Pipe Line Co. | Laverne | Okla. | Harper | 5 19 67 | Iss. |
| CI63-1582—Cities Service Gas Co. | North Quinlan | Okla. | Woodward | 5 19 67 | Iss. |
| CI65-262—Arkansas Louisiana Gas Co. | Northeast Milton | Okla. | Haskell | 5 19 67 | Iss. |
| Barron Kidd: | | | | | |
| CI67-830—Cumberland & Allegheny Gas Co. | Letcher Markley | W. Va. | Barbour | 3 2 67 | Iss. |
| CI67-831—Cumberland & Allegheny Gas Co. | Undesignated | W. Va. | Upshur | 3 2 67 | Iss. |
| S. H. Killingsworth, Operator, et al.: | | | | | |
| CI66-63—Texas Eastern Transmission Corp. | Rodessa | Tex. | Marion | 3 29 67 | Iss. |
| Kirby Royalties, Inc., et al.: | | | | | |
| CI67-1213—Mountain Fuel Supply Co. | West Side Canal Area. | Colo. | Moffat | 4 24 67 | Iss. |
| Fred Kosanovic, M.D.: | | | | | |
| CI67-134—Carnegie Natural Gas Co. | Murphy | W. Va. | Ritchie | 3 29 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| L. and M. Ventures: | | | | | |
| CI67-670—El Paso Natural Gas Co. | South Blanco Pictured Cliffs. | N. Mex | Rio Arriba | 1 9 67 | Iss. |
| L & N Production Co.: | | | | | |
| CS67-46—El Paso Natural Gas Co. | Undesignated | Tex | Reagan | 3 13 67 | Iss. |
| Robert P. Lammerts: | | | | | |
| CI67-215—Panhandle Eastern Pipe Line Co. | Mocane | Okla | Beaver | 1 23 67 | Iss. |
| Helding Larson, et al.: | | | | | |
| CI67-1291—The Manufacturers Light and Heat Co. | Undesignated | Pa | Elk | 5 1 67 | Rej. |
| Lesh Co.: | | | | | |
| G-2595—Natural Gas Pipeline Co. of America. | Amargosa | Tex | Jim Wells | 5 19 67 | Iss. |
| CS67-28—West Texas Gathering Co. | Weiner | Tex | Winkler | 3 13 67 | Iss. |
| S. A. Lewis, Agent: | | | | | |
| CI67-1001—The Manufacturers Light and Heat Co. | Amwell Township | Pa | Washington | 5 1 67 | Rej. |
| William D. Lewis, Jr., et al.: | | | | | |
| CI67-881—United Fuel Gas Co | Duval District | W. Va | Lincoln | 4 6 67 | Iss. |
| S. G. Liming: | | | | | |
| G-4767—United Fuel Gas Co | Union | W. Va | Clay | 3 2 67 | Iss. |
| Little Nick Oil Co., Operator, et al.: | | | | | |
| CI63-1396—Arkansas Louisiana Gas Co. | Undesignated | Okla | Grady | 3 13 67 | Iss. |
| Livingston Oil Co.: | | | | | |
| CI67-391—Colorado Interstate Gas Co. | Greenwood | Kans | Morton | 1 17 67 | Iss. |
| Lock 3 Oil, Coal & Dock Co., et al.: | | | | | |
| CI67-1196—Consolidated Gas Supply Corp. | Warren District | W. Va | Upshur | 4 24 67 | Iss. |
| CI67-1200—Consolidated Gas Supply Corp. | Elk District | W. Va | Harrison | 4 24 67 | Iss. |
| CI67-1266—Consolidated Gas Supply Corp. | Elk District | W. Va | Harrison | 5 19 67 | Iss. |
| Lonita Oil Corp., Inc., Operator, et al.: | | | | | |
| CI67-1048—Wunderlich Development Co. | Undesignated | Kans | Cowley | 4 14 67 | Iss. |
| Louden Production Co., et al.: | | | | | |
| CI67-1087—The Manufacturers Light and Heat Co. | Red Bank | Pa | Armstrong | 4 19 67 | Iss. |
| Luffey & Primos Gas Co.: | | | | | |
| CI66-477—Humble Gas Transmission Co. | Monroe | La | Union | 4 24 67 | Iss. |
| Jess Lynch, d/b/a Savage Oil Co., et al.: | | | | | |
| CI67-27—El Paso Natural Gas Co. | Donham | Tex | Crockett | 1 24 67 | Iss. |
| C. H. Lyons, Sr.: | | | | | |
| CI66-862—Mississippi River Transmission Corp. | Hico Knowles | La | Lincoln | 4 5 67 | Iss. |
| Hall M. Lyons, Operator, et al.: | | | | | |
| CI67-1101—Transcontinental Gas Pipe Line Corp. | Ravenswood | La | Pointe Coupe | 4 14 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| MPS Production Co., Operator, et al.: | | | | | |
| CI67-1202—Texas Eastern Transmission Corp. | Anna Barre | Tex | De Witt | 4 24 67 | Iss. |
| MWJ Producing Co., et al., Agent: | | | | | |
| CI66-766—El Paso Natural Gas Co. | Undesignated | Tex | Reagan | 5 16 67 | Iss. |
| T. H. McCasland, Operator, et al.: | | | | | |
| CI67-1545—Consolidated Gas Supply Corp. | Union District | W. Va | Elk | 6 27 67 | Iss. |
| Barbara B. McCombs, et al.: | | | | | |
| CS67-56—El Paso Natural Gas Co. | Undesignated | Tex | Ector | 5 4 67 | Iss. |
| J. William McElvain: | | | | | |
| CI67-961—El Paso Natural Gas Co. | Basin Dakota | N. Mex | Rio Arriba | 4 6 67 | Iss. |
| Machin Oil, Ltd.: | | | | | |
| CI67-78—Arkansas Louisiana Gas Co. | Hodge | La | Jackson Parish | 2 14 67 | Iss. |
| Mack Oil Co.: | | | | | |
| CI67-1158—Arkansas Louisiana Gas Co. | Drummond Area | Okla | Major | 4 19 67 | Iss. |
| Vernon J. Main, Jr.: | | | | | |
| CI67-1043—Texas Eastern Transmission Corp. | Oberlin | La | Allen Parish | 4 19 67 | Iss. |
| Marathon Oil Co.: | | | | | |
| CI67-1225—Cities Service Gas Co. | Bishop Area | Okla | Ellis | 4 24 67 | Iss. |
| CI67-1230—Cities Service Gas Co. | Bishop Area | Okla | Roger Mills | 5 12 67 | Iss. |
| May Petroleum, Inc., et al.: | | | | | |
| CI67-760—Arkansas Louisiana Gas Co. | North Drummond | Okla | Major | 1 23 67 | Iss. |
| Oscar E. Mayfield: | | | | | |
| CI67-687—United Gas Pipe Line Co. | White Point East 220. | Tex | San Patricio | 1 17 67 | Iss. |
| W. W. Meeker: | | | | | |
| CS67-43—El Paso Natural Gas Co.* | Undesignated | Tex | Undesignated | 3 13 67 | Iss. |
| Meigs Developing Co.: | | | | | |
| CI67-1310—The Ohio Fuel Gas Co. | Undesignated | Ohio | Meigs | 5 24 67 | Iss. |
| J. Gregory Merrion, et al.: | | | | | |
| CI66-1036—El Paso Natural Gas Co. | Flora Vista Mesa Verde. | N. Mex | San Juan | 4 5 67 | Iss. |
| Mesa Petroleum Co.: | | | | | |
| CI67-669—Northern Natural Gas Co. | Gooch | Okla | Texas | 1 9 67 | Iss. |
| CI67-772—Michigan Wisconsin Pipe Line Co. | Laverne | Okla | Harper | 2 15 67 | Iss. |
| CI67-877—Northern Natural Gas Co. | Lovedale | Okla | Harper | 3 13 67 | Iss. |
| CI67-1273—Consolidated Gas Supply Corp. | Prentice | Tex | Jefferson | 6 6 67 | Iss. |
| CI67-1361—Northern Natural Gas Co. | Como | Okla | Beaver | 5 19 67 | Rej. |
| Micoa, Inc.: | | | | | |
| CI67-874—Consolidated Gas Supply Corp. | Cecil Post | W. Va | Braxton | 3 13 67 | Iss. |
| Midhurst Oil Corp.: | | | | | |
| CI67-594—United Gas Pipe Line Co. | Burnell | Tex | Bee* | 1 17 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Midterra Associates, Inc.: | | | | | |
| CI67-1172—Lake Shore Pipe Line Co. | Bushnell | Pa | Erie | 4 19 67 | Iss. |
| CI67-1216—Arkansas Louisiana Gas Co. | South Cement | Okla | Caddo | 4 24 67 | Iss. |
| Allerton Miller: | | | | | |
| CI67-732—Cumberland & Allegheny Gas Co. | Banks | W. Va | Upshur | 1 23 67 | Iss. |
| CI67-885—Cumberland & Allegheny Gas Co. | Warren District | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-886—Cumberland & Allegheny Gas Co. | Warren District | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-1016—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va | Upshur | 4 05 67 | Iss. |
| Miller & Fox Minerals Corp.: | | | | | |
| CI67-768—Landa Oil Co | Quinto Creek | Tex | Jim Wells | 3 21 67 | Iss. |
| Lee E. Minter: | | | | | |
| CI67-496—Consolidated Gas Supply Corp. | Brady* | Pa | Clearfield | 1 9 67 | Iss. |
| CI67-497—Consolidated Gas Supply Corp. | Sandy | Pa | Clearfield | 1 9 67 | Iss. |
| CI67-498—Consolidated Gas Supply Corp. | Shippen | Pa | Cameron | 1 9 67 | Iss. |
| CI67-499—Consolidated Gas Supply Corp. | Gibson | Pa | Cameron | 1 9 67 | Iss. |
| CI67-500—Consolidated Gas Supply Corp. | Dubois | Pa | Clearfield | 1 9 67 | Iss. |
| CI67-501—Consolidated Gas Supply Corp. | Sandy | Pa | Clearfield | 1 9 67 | Iss. |
| CI67-502—Consolidated Gas Supply Corp. | Benezette | Pa | Elk | 1 9 67 | Iss. |
| CI67-503—Consolidated Gas Supply Corp. | Sandy | Pa | Clearfield | 1 9 67 | Iss. |
| CI67-504—Consolidated Gas Supply Corp. | Sandy | Pa | Clearfield | 1 9 67 | Iss. |
| CI67-509—Consolidated Gas Supply Corp. | Young | Pa | Jefferson | 1 9 67 | Iss. |
| CI67-510—Consolidated Gas Supply Corp. | Houston | Pa | Clearfield | 1 9 67 | Iss. |
| CI67-511—Consolidated Gas Supply Corp. | Brady* | Pa | Clearfield | 1 9 67 | Iss. |
| CI67-512—Consolidated Gas Supply Corp. | Young | Pa | Jefferson | 1 9 67 | Iss. |
| CI67-688—Consolidated Gas Supply Corp. | Gaskill Township | Pa | Jefferson | 3 2 67 | Iss. |
| CI67-965—The Manufacturers Light and Heat Co. | Buffington Township. | Pa | Indiana | 4 6 67 | Iss. |
| CI67-966—The Manufacturers Light and Heat Co. | Houston Township | Pa | Clearfield | 4 6 67 | Iss. |
| Mobil Oil Corp.: | | | | | |
| CI67-465—Natural Gas Pipeline Co. of America. | Indian Basin | N. Mex | Eddy | 4 6 67 | Iss. |
| CI67-878—Panhandle Eastern Pipe Line Co. | Bishop* | Okla | Ellis | 3 13 67 | Iss. |
| CI67-937—Arkansas Louisiana Gas Co. | South Cement | Okla | Caddo | 3 29 67 | Iss. |
| CI67-977—Panhandle Eastern Pipe Line Co. | Mocane | Okla | Beaver | 4 6 67 | Iss. |
| Rex Monahan: | | | | | |
| CI65-31—Kansas-Nebraska Natural Gas Co., Inc. | Pinto | Colo | Washington | 3 2 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| W. A. Moncrief: | | | | | |
| CS67-10—Arkansas Louisiana Gas Co. | Undesignated | Tex | Undesignated | 3 28 67 | Wtd. |
| W. A. Moncrief, Jr.: | | | | | |
| CI67-790—El Paso Natural Gas Co. | Basin-Dakota | N. Mex | San Juan | 2 15 67 | Iss. |
| Monsanto Co., Operator, et al.: | | | | | |
| CI62-347—El Paso Natural Gas Co. | Flodine Park Area | Colo | Montezuma | 4 14 67 | Iss. |
| CI67-367—Panhandle Eastern Pipe Line Co. | Northeast Waynoka | Okla | Woods | 1 17 67 | Iss. |
| CI67-1079—Transwestern Pipeline Co. | Mendota | Tex | Roberts* | 4 24 67 | Iss. |
| CI67-1160—Transwestern Pipeline Co. | Worsham | Tex | Reeves | 5 24 67 | Iss. |
| Don D. & Gilbert Montgomery: | | | | | |
| CI67-1204—Cities Service Gas Co. | Waynoka | Okla | Woods | 4 24 67 | Iss. |
| Montlar Oil & Gas Development Co., Inc., Operator: | | | | | |
| CI67-157—United Fuel Gas Co | Henry District | W. Va | Clay | 10 17 67 | Iss. |
| CI67-673—United Fuel Gas Co | Union | W. Va | Clay | 1 17 67 | Iss. |
| CI67-674—United Fuel Gas Co | Union* | W. Va | Clay* | 1 17 67 | Iss. |
| CI67-883—Equitable Gas Co | Troy District | W. Va | Gilmer | 3 21 67 | Iss. |
| CI67-1059—Equitable Gas Co | Troy District | W. Va | Gilmer | 4 14 67 | Iss. |
| Carl R. Morris: | | | | | |
| CI67-921—Equitable Gas Co | Salt Lick | W. Va | Braxton | 3 29 67 | Iss. |
| Robert Mosbacher, Operator, et al.: | | | | | |
| CI67-1026—Trunkline Gas Co | East Mulvey | La | Vermilion | 4 19 67 | Iss. |
| CI67-1042—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | North Texana | Tex | Jackson | 4 19 67 | Iss. |
| CI67-1407—Consolidated Gas Supply Corp. | Beaver Township | Pa | Gilmer | 6 6 67 | Iss. |
| W. H. Mossor, et al., d/b/a Kuhn Oil & Gas Co.: | | | | | |
| CI66-926—Carnegie Natural Gas Co. | Union District | W. Va | Ritchie | 3 29 67 | Iss. |
| CI67-334—Michigan Wisconsin Pipe Line Co. | Northwest Lovedale. | Okla | Harper | 2 15 67 | Iss. |
| Norine Randle Murchison: | | | | | |
| CI67-829—Tennessee Gas Pipeline Co., A Division of Tenneco Inc. | Premont | Tex | Jim Wells | 3 2 67 | Iss. |
| Webster Myers, et al.: | | | | | |
| CI63-1469—Consolidated Gas Supply Corp. | Dekalb District | W. Va | Gilmer | 5 12 67 | Iss. |
| National Cooperative Refinery Association, Operator, et al.: | | | | | |
| CI67-1003—Panhandle Eastern Pipe Line Co. | Undesignated | Okla | Texas | 4 19 67 | Iss. |
| Natural Gas & Oil Corp.: | | | | | |
| CI67-525—El Paso Natural Gas Co. | Gomez | Tex | Pecos | 3 21 67 | Iss. |
| Newdelva Corp.: | | | | | |
| G-9683—Consolidated Gas Supply Corp. | Murphy District | W. Va | Ritchie | 5 12 67 | Iss. |
| G-11741—Consolidated Gas Supply Corp. | Murphy District | W. Va | Ritchie | 5 12 67 | Iss. |

See footnotes at end of table, p. 1246;

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Newdelva Corp.—Continued | | | | | |
| G-12945—Consolidated Gas Supply Corp. | Murphy District.... | W. Va..... | Ritchie.......... | 5 12 67 | Iss. |
| CI61-369—Consolidated Gas Supply Corp. | Sherman District... | W. Va..... | Calhoun......... | 5 12 67 | Iss. |
| CI61-1277—Consolidated Gas Supply Corp. | Dekalb District..... | W. Va..... | Gilmer.......... | 5 12 67 | Iss. |
| CI61-1281—Consolidated Gas Supply Corp. | Dekalb District..... | W. Va..... | Gilmer.......... | 5 12 67 | Iss. |
| CI62-18—Consolidated Gas Supply Corp. | Dekalb District..... | W. Va..... | Gilmer.......... | 5 12 67 | Iss. |
| CI62-1115—Consolidated Gas Supply Corp. | Dekalb District..... | W. Va..... | Gilmer.......... | 5 12 67 | Iss. |
| CI67-723—Equitable Gas Co...... | Skin Creek.......... | W. Va..... | Lewis........... | 1 23 67 | Iss. |
| Amos Newsom, d/b/a Amos Newsom Coal Co.: | | | | | |
| CI67-554—United Fuel Gas Co... | Appalachian Gas.... | Ky....... | Pike............ | 5 24 67 | Iss. |
| Northern Natural Gas Producing Co.: | | | | | |
| CI67-466—Natural Gas Pipeline Co. of America. | Indian Basin........ | N. Mex.... | Eddy........... | 4 6 67 | Iss. |
| CI67-1057—Phillips Petroleum Co. | Undesignated....... | Tex....... | Hutchinson..... | 4 19 67 | Iss. |
| D.A. Null, et al.: | | | | | |
| CI66-747—Equitable Gas Co...... | Church District..... | W. Va..... | Wetzel.......... | 3 2 67 | Iss. |
| CI67-675—Transwestern Pipeline Co. | N. E. Ivanhoe Pool. | Okla...... | Beaver......... | 1 9 67 | Iss. |
| CI67-718—Panhandle Eastern Pipe Line Co. | Carthage Pool....... | Okla...... | Texas........... | 1 23 67 | Iss. |
| CI67-771—Panhandle Eastern Pipe Line Co. | Mocane-Laverne Pool. | Okla...... | Beaver......... | 2 15 67 | Iss. |
| Furman L. Nuss: | | | | | |
| CI67-1183—The Manufacturers Light and Heat Co. | Undesignated....... | Pa........ | Washington..... | 3 14 67 | Rej. |
| CI67-1184—The Manufacturers Light and Heat Co. | Undesignated....... | Pa........ | Washington..... | 3 14 67 | Rej. |
| CI67-1185—The Manufacturers Light and Heat Co. | Undesignated....... | Pa........ | Washington..... | 3 14 67 | Rej. |
| CI67-1186—The Manufacturers Light and Heat Co. | Undesignated....... | Pa........ | Washington..... | 3 14 67 | Rej. |
| O. F. & R. Oil Co.: | | | | | |
| CS67-48—El Paso Natural Gas Co. | Undesignated....... | Tex.*..... | Ector........... | 5 31 67 | Iss. |
| E. A. Obering, et al.: | | | | | |
| CI67-625—Panhandle Eastern Pipe Line Co. | Woodward.......... | Okla...... | Woodward...... | 1 9 67 | Iss. |
| Occidental Petroleum Corp., Operator, et al.: | | | | | |
| CI67-311—Southern Natural Gas Co. | Mystic Bayou....... | La........ | St. Martin...... | 1 9 67 | Iss. |
| CI67-549—Northern Natural Gas Co. | Undesignated....... | Okla...... | Beaver......... | 1 17 67 | Iss. |
| CI67-1106—Oklahoma Natural Gas Gathering Corp. | Ringwood.......... | Okla...... | Major........... | 5 12 67 | Iss. |
| Oil Industries Associates, et al.: | | | | | |
| CI67-897—Consolidated Gas Supply Corp. | McKim District..... | W. Va...... | Pleasants...... | 3 21 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Okmar Oil Co., et al.: | | | | | |
| CI64-70—Arkansas Louisiana Gas Co. | Waukomis | Okla | Garfield | 3 2 67 | Iss. |
| CI64-652—Arkansas Louisiana Gas Co. | West Enid | Okla | Garfield | 3 29 67 | Iss. |
| Howard Olsen: | | | | | |
| CS67-44—Transwestern Pipeline Co. | Hamon-Ellenberger | Tex | Reeves | 3 13 67 | Iss. |
| Harry J. Owens, Operator, et al.: | | | | | |
| CI67-1473—The Ohio Fuel Gas Co. | Glenville District | W. Va | Meigs | 6 26 67 | Iss. |
| Pan American Petroleum Corp.: | | | | | |
| G-15079—Southern Union Gathering Co. | Aztec Pictured Cliff. | N. Mex | San Juan | 4 14 67 | Iss. |
| G-18147—Southern Union Gathering Co. | Blanco-Mesa Verde | N. Mex | San Juan | 4 14 67 | Iss. |
| G-18191—El Paso Natural Gas Co. | Blanco-Mesa Verde | N. Mex | San Juan | 4 14 67 | Iss. |
| CI63-749—Arkansas Louisiana Gas Co. | Cheniere | La | Ouachita | 4 24 67 | Iss. |
| CI64-713—Transwestern Pipeline Co. | Halley | Tex | Winkler | 1 17 67 | Wtd. |
| CI66-950—Mississippi River Transmission Corp. | Hico-Knowles | La | Lincoln | 2 15 67 | Iss. |
| CI67-745—Northern Natural Gas Co. | East Keenan | Okla | Woodward | 1 23 67 | Iss. |
| CI67-747—Michigan Wisconsin Pipe Line Co. | Woodward Gas Area. | Okla | Woodward | 1 23 67 | Iss. |
| CI67-812—Lone Star Gas Co. | North Durant | Okla | Bryan | 2 15 67 | Iss. |
| CI67-891—Michigan Wisconsin Pipe Line Co. | Northwest Mendota Area. | Tex | Roberts* | 3 29 67 | Iss. |
| CI67-955—Texas Gas Transmission Corp. | Shiloh | La | Union Parish | 4 19 67 | Iss. |
| CI67-968—Panhandle Eastern Pipe Line Co. | N. E. Seiling | Okla | Dewey | 4 6 67 | Iss. |
| The Parade Co., Operator: | | | | | |
| CI67-1074—United Gas Pipe Line Co. | Giles Plant | Tex | Rusk | 4 14 67 | Iss. |
| Payne Petroleum Corp.: | | | | | |
| CI65-1143—Michigan Wisconsin Pipe Line Co. | Laverne | Okla | Harper | 2 15 67 | Iss. |
| CI67-1392—Oklahoma Natural Gas Gathering Corp. | Ringwood | Okla | Major | 5 24 67 | Iss. |
| CI67-1449—Oklahoma Natural Gas Gathering Corp. | Ringwood | Okla | Major | 3 21 67 | Iss. |
| Carl Perkins: | | | | | |
| CI67-841—Equitable Gas Co. | Clay District | W. Va | Ritchie | 3 13 67 | Iss. |
| Petroleum International, Inc., Operator, et al.: | | | | | |
| CI64-520—Michigan Wisconsin Pipe Line Co. | Woodward Area | Okla | Major | 5 22 67 | Iss. |
| Loyce Phillips, Operator, et al.: | | | | | |
| CI67-1094—United Gas Pipe Line Co. | Pettit | Tex | Harrison | 4 19 67 | Iss. |
| Phillips Petroleum Co.: | | | | | |
| CI67-866—Panhandle Eastern Pipe Line Co. | Permian | Okla | Beaver | 3 13 67 | Iss. |
| CI67-905—El Paso Natural Gas Co. | Eunice | N. Mex | Lea | 4 14 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION ¹ |
|---|---|---|---|---|---|
| J. A. Pierce: | | | | | |
| CI67-1062—El Paso Natural Gas Co. | Undesignated | N. Mex | Rio Arriba | 5 16 67 | Iss. |
| Piney Point Petroleums: | | | | | |
| CI67-797—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Randon | Tex | Fort Bend | 2 14 67 | Iss. |
| CI67-1015—Texas Eastern Transmission Corp. | Bomba | Tex | Goliad | 4 5 67 | Iss. |
| Pioneer Production Corp., Operator, et al.: | | | | | |
| CI63-607—Transwestern Pipeline Co. | Undesignated | Tex | Lipscomb | 2 15 67 | Iss. |
| CI67-978—Panhandle Eastern Pipe Line Co. | West Panhandle | Tex | Moore | 4 5 67 | Iss. |
| Platco Corp.: | | | | | |
| CI67-856—Lake Shore Pipe Line Co. | Bushnell | Pa | Erie | 3 13 67 | Iss. |
| C. O. Poling, et al., d/b/a Smith & Poling Gas Co.: | | | | | |
| CI67-1132—Cabot Corp | Sherman District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1133—Cabot Corp | Lee District | W. Va | Calhoun | 4 19 67 | Iss. |
| Louis Polk: | | | | | |
| CS67-40—Transwestern Pipeline Co. | Undesignated | Tex | Reeves | 3 13 67 | Iss. |
| Post Oak Oil Co.: | | | | | |
| CI67-801—Oklahoma Natural Gas Gathering Corp. | Ringwood | Okla | Major | 3 21 67 | Iss. |
| Bernard A. Ray, Operator, et al.: | | | | | |
| CS67-57—El Paso Natural Gas Co. | Drinkard | N. Mex | Lea | 5 4 67 | Iss. |
| C. F. Raymond, et al.: | | | | | |
| CI67-763—Kansas-Nebraska Natural Gas Co., Inc. | Bonanza | Colo | Logan | 2 15 67 | Iss. |
| Jack P. Rayzor, Operator, et al.: | | | | | |
| CI61-1470—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Pelican | Tex | Liberty | 5 12 67 | Iss. |
| Reading & Bates Offshore Drilling Co., Operator, et al.: | | | | | |
| CI67-884—Northern Natural Gas Co. | Undesignated | Okla | Beaver | 3 21 67 | Iss. |
| Redfern Oil Co.: | | | | | |
| CS67-66—El Paso Natural Gas Co. | Denton | N. Mex | Lea | 6 20 67 | Iss. |
| A. C. Renner, et al.: | | | | | |
| CI67-1078—The Manufacturers Light and Heat Co. | Amwell Township | Pa | Washington | 4 19 67 | Iss. |
| Mary A. Renner, et al.: | | | | | |
| CI67-707—Carnegie Natural Gas Co. | Clay District | W. Va | Wetzel | 5 16 67 | Iss. |
| Rhoades Oil Co.: | | | | | |
| CI67-967—Cities Service Gas Co. | West Merrick | Okla | Logan | 4 5 67 | Iss. |
| James C. Riley, Jr.: | | | | | |
| CI67-681—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Southwest Garwood. | Tex | Colorado | 1 9 67 | Iss. |
| D. D. Roberts, et al.: | | | | | |
| CI67-178—Carnegie Natural Gas Co. | Union District | W. Va | Ritchie | 10 17 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Roberts & Murphy, Inc.: | | | | | |
| G-4713—Arkansas Louisiana Gas Co. | Waskom | Tex | Harrison | 5 24 67 | Iss. |
| G-4714—United Gas Pipe Line Co. | Bethany | Tex | Panola | 5 24 67 | Iss. |
| G-12848—Northern Natural Gas Co. | Fincham Gas | Kans | Meade | 5 24 67 | Iss. |
| Larry Robinson: | | | | | |
| CI65-1220—Almos Gas Gathering Co. | Cranz | Tex | Bee* | 5 12 67 | Iss. |
| Lendol Rogers, Agent for Hartley May No. 1: | | | | | |
| CI67-1193—Cabot Corp | Washington District. | W. Va | Calhoun | 4 24 67 | Iss. |
| W. G. Rogers, et al.: | | | | | |
| CI67-1039—Panhandle Eastern Pipe Line Co. | Mocane-Laverne Area. | Okla | Beaver | 4 19 67 | Iss. |
| Wilhelmina Dup. Ross, Operator, et al.: | | | | | |
| G-12994—Texas Eastern Transmission Corp. | South Hallsville | Tex | Harrison | 3 29 67 | Iss. |
| Leo M. Ryan, et al.: | | | | | |
| CI66-1111—Pennsylvania Gas Co. | Hamilton Township. | Pa | McKean | 4 5 67 | Iss. |
| W. P. Ryan, for Estate of James A. May: | | | | | |
| CI67-1017—Kentucky-West Virginia Gas Co. | Beaver Creek | Ky | Floyd | 4 19 67 | Iss. |
| St. Helens Petroleum Corp.: | | | | | |
| G-19226—Colorado Interstate Gas Co. | Table Rock | Wyo | Sweetwater | 3 21 67 | Iss. |
| Salt Lick District, et al.: | | | | | |
| CI67-1272—Consolidated Gas Supply Corp. | Salt Lick District* | W. Va | Braxton* | 5 19 67 | Iss. |
| C. L. Sample: | | | | | |
| CI67-1107—The Manufacturers Light and Heat Co. | Richhill | Pa | Greene | 4 19 67 | Iss. |
| W. G. Sampson, et al., d/b/a Meadow Run Gas Co.: | | | | | |
| CI67-945—Consolidated Gas Supply Corp. | Washington District. | W. Va | Calhoun | 3 29 67 | Iss. |
| John M. Sawyer, Agent: | | | | | |
| CI67-981—The Manufacturers Light and Heat Co. | Benezette Township. | Pa | Elk | 4 6 67 | Iss. |
| John E. Schalk: | | | | | |
| CI67-693—El Paso Natural Gas Co. | Undesignated | N. Mex | Rio Arriba | 1 17 67 | Iss. |
| F. P. Schonwald Co.: | | | | | |
| CI67-561—Panhandle Eastern Pipe Line Co. | South Peek | Okla | Ellis | 12 20 67 | Iss. |
| Scope Industries: | | | | | |
| CI67-454—Arkansas Louisiana Gas Co. | South Erick | Okla | Claiborne | 6 29 67 | Iss. |
| James F. Scott, d/b/a E. Chapman Lease: | | | | | |
| CI62-437—Consolidated Gas Supply Corp. | Cove District | W. Va | Doddridge | 3 21 67 | Iss. |
| CI67-924—Consolidated Gas Supply Corp. | McCellan | W. Va | Doddridge | 3 21 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,‡ DOCKET NO. AND PURCHASER‡ | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Joseph E. Seagram & Sons, Inc.: | | | | | |
| CI67-822—Southern Union Gathering Co. | Basin Dakota | N. Mex | San Juan | 3 2 67 | Iss. |
| CI67-909—Cumberland & Alle- | Undesignated | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-910—Cumberland & Allegheny Gas Co. | Warren District | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-911—Cumberland & Allegheny Gas Co. | Union District | W. Va | Barbour | 3 21 67 | Iss. |
| CI67-912—Cumberland & Allegheny Gas Co. | Banks District | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-913—Cumberland & Allegheny Gas Co. | Banks District | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-914—Cumberland & Allegheny Gas Co. | Banks District | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-915—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-916—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-917—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-918—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-919—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-920—Cumberland & Allegheny Gas Co. | Buckhannon District. | W. Va | Upshur | 3 21 67 | Iss. |
| CI67-1593—The Manufacturers Light and Heat Co. | Basin Dakota | N. Mex | Washington | 6 29 67 | Iss. |
| John G. Searle: | | | | | |
| CS67-42—Transwestern Pipeline Co. | Undesignated | Tex | Reeves | 3 13 67 | Iss. |
| Paul E. Shaffer Co.: | | | | | |
| CI67-1023—The Manufacturers Light and Heat Co. | Porter Township* | Pa | Clarion | 4 19 67 | Iss. |
| The Shamrock Oil and Gas Corp.: | | | | | |
| CI67-1031—Northern Natural Gas Co. | Undesignated | Tex | Hansford | 4 5 67 | Iss. |
| Shell Oil Co.: | | | | | |
| CI66-812—Ashland Oil & Refining Co. | Hugoton | Kans | Grant* | 2 15 67 | Iss. |
| CI67-809—Consolidated Gas Supply Corp. | New Melton District. | W. Va | Doddridge | 2 15 67 | Iss. |
| CI67-1233—Pennsylvania Gas Co. | Sheffield Township. | Pa | Warren | 5 12 67 | Iss. |
| CI67-1350—United Fuel Gas Co. | Four Mile | W. Va | Lincoln | 5 16 72 | Iss. |
| Shenandoah Oil Corp.: | | | | | |
| CI67-1331—Cities Service Gas Co. | Aetna | Kans | Barber | 5 16 67 | Iss. |
| CI67-1332—Cities Service Gas Co. | Groendyke | Kans | Barber | 5 16 67 | Iss. |
| CI67-1368—Baca Gas Gathering System, Inc. | Midway | Colo | Baca | 5 24 67 | Iss. |
| C. Fred Shewey, Agent for M. Collier: | | | | | |
| CI67-892—United Fuel Gas Co. | Undesignated | W. Va | Mingo | 3 21 67 | Iss. |
| James E. Siar: | | | | | |
| CI67-94—United Natural Gas Co. | Eldred Township* | Pa | Jefferson | 4 19 67 | Iss. |
| Sidwell Oil and Gas, Inc., Operator et al.: | | | | | |
| CI67-729—Panhandle Eastern Pipe Line Co. | Undesignated | Okla | Beaver | 1 17 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Sidwell Oil and Gas, Inc., Operator, et al.—Con. | | | | | |
| CI67-690—Natural Gas Pipeline Co. of America. | Mobeetie | Tex | Wheeler | 1 17 67 | Iss. |
| CI67-753—United Fuel Gas Co. | Lake Long | La | Lafourche | 1 23 67 | Iss. |
| CI67-786—Kansas-Nebraska Natural Gas Co., Inc. | Castle Garden | Wyo | Fremont | 2 14 67 | Iss. |
| CI67-792—Arkansas Louisiana Gas Co. | Wilburton Area | Okla | Pittsburg | 2 14 67 | Iss. |
| CI67-867—Southern Natural Gas Co. | East Franklin | La | St. Mary | 3 13 67 | Iss. |
| CI67-869—Cities Service Gas Co. | Hugoton | Kans | Finney | 3 29 67 | Iss. |
| CI67-928—El Paso Natural Gas Co. | Sonora | Tex | Sutton | 3 13 67 | Iss. |
| CI67-1082—El Paso Natural Gas Co. | Mickelson Creek | Wyo | Sublette | 4 19 67 | Iss. |
| CI67-1205—El Paso Natural Gas Co. | Todd San Andres | Tex | Crockett | 5 16 67 | Iss. |
| Skelly Oil Co.: | | | | | |
| CI64-793—Colorado Interstate Gas Co. | Mocane | Okla | Beaver | 5 16 67 | Iss. |
| CI67-853—Arkansas Louisiana Gas Co. | Arkoma | Okla | Latimer | 3 2 67 | Iss. |
| CI67-854—Arkansas Louisiana Gas Co. | Arkoma | Okla | Latimer | 3 2 67 | Iss. |
| CI67-939—Cities Service Gas Co. | Bishop Area | Okla | Roger Mills | 4 5 67 | Iss. |
| Andrew C. Smith & Clarence F. Mullins: | | | | | |
| CI67-154—Cities Service Gas Co. | S.W. Prairie Gem | Okla | Lincoln | 10 7 67 | Iss. |
| CI67-155—Cities Service Gas Co. | S.W. Prairie Gem | Okla | Lincoln | 10 7 67 | Iss. |
| Smith Drilling Contractor, Inc., et al.: | | | | | |
| CI67-976—Consolidated Gas Supply Corp. | Meade District | W. Va | Tyler | 4 6 67 | Iss. |
| Jas. F. Smith: | | | | | |
| CI67-837—Northern Natural Gas Co. | Undesignated | Tex | Lipscomb | 3 2 67 | Iss. |
| A.M. Snider, et al., d/b/a Hundred Gas Co. | | | | | |
| CI67-989—The Manufacturers Light and Heat Co. | Church District | W. Va | Wetzel | 4 6 67 | Iss. |
| South-Tex Corp.: | | | | | |
| CI63-33—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Undesignated | Tex | Nueces* | 5 24 67 | Iss. |
| Southern Minerals Corp., Operator, et al.: | | | | | |
| CI67-895—Valley Gas Transmission, Inc. | Buckeye Knoll Northwest (Hockley) | Tex | Live Oak | 4 14 67 | Iss. |
| Southern Union Production Co.: | | | | | |
| CI67-196—Carnegie Natural Gas Co. | Speary | Tex | Gilmer | 6 27 67 | Iss. |
| Spicknall Enterprises: | | | | | |
| CI67-773—El Paso Natural Gas Co. | Undesignated | Tex | Wheeler | 2 15 67 | Iss. |
| Sydney Spofforth, et al.: | | | | | |
| CI67-1072—Equitable Gas Co. | West Union District | W. Va | Doddridge | 4 19 67 | Iss. |
| Harry Spooner, Jr., Operator, et al.; | | | | | |
| CI67-828—United Gas Pipe Line Co. | Sardis Church | La | Caldwell | 3 2 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION [1] |
|---|---|---|---|---|---|
| John T. Stanley, Agent for S. & B. Oil & Gas Co.: | | | | | |
| CI66-928—Carnegie Natural Gas Co. | Union District | W. Va. | Ritchie | 4 19 67 | Iss. |
| Paul F. Starr, Agent for Parker Petroleum Co., et al.: | | | | | |
| CI67-875—Consolidated Gas Supply Corp. | Spencer District | W. Va. | Roane | 3 21 67 | Iss. |
| The Stevens County Oil & Gas Co. (Co-partnership): | | | | | |
| G-5256—Northern Natural Gas Co.*. | Hugoton | Kans. | Seward* | 4 14 67 | Iss. |
| G-9744—Plateau Natural Gas Co. | Hugoton | Kans. | Kearny | 4 14 67 | Iss. |
| G-10017—Kansas-Nebraska Natural Gas Co., Inc. | Hugoton | Kans. | Kearny | 4 14 67 | Iss. |
| G-10104—Colorado Interstate Gas Co. | Sparks | Kans. | Morton | 4 14 67 | Iss. |
| CI61-445—Panhandle Eastern Pipe Line Co. | Undesignated | Kans. | Stevens* | 4 14 67 | Iss. |
| CI62-454—Panhandle Eastern Pipe Line Co. | Undesignated | Kans. | Morton* | 4 14 67 | Iss. |
| Fred C. Stone, Agent for Athens Oil & Gas Co.: | | | | | |
| CI67-720—Carnegie Natural Gas Co. | Clay | W. Va. | Ritchie | 1 23 67 | Iss. |
| CI67-725—Carnegie Natural Gas Co. | Clay | W. Va. | Ritchie | 1 23 67 | Iss. |
| Stuarco Oil Co., Inc., Operator, et al.: | | | | | |
| CI67-1356—Kansas-Nebraska Natural Gas Co., Inc. | Undesignated | Colo. | Logan | 5 24 67 | Iss. |
| Joseph Stydahar, d/b/a Stydahar Oil & Gas Co.: | | | | | |
| CI67-899—Consolidated Gas Supply Corp. | Elk District | W. Va. | Harrison | 3 21 67 | Iss. |
| CI67-948—Cumberland & Allegheny Gas Co | Buckhannon District. | W. Va. | Upshur | 3 29 67 | Iss. |
| CI67-1212—Consolidated Gas Supply Corp. | Elk District | W. Va. | Harrison | 4 24 67 | Iss. |
| Sun Oil Co.: | | | | | |
| CI61-1710—Valley Gas Transmission, Inc. | South Elsa | Tex. | Hidalgo | 3 21 67 | Iss. |
| CI67-153—Panhandle Eastern Pipe Line Co. | Tangier* | Okla. | Ellis* | 10 7 67 | Iss. |
| CI67-734—Northern Natural Gas Co. | Chaney, N.E.* | Okla. | Ellis | 1 23 67 | Iss. |
| CI67-860—Northern Natural Gas Co. | Perryton | Tex. | Ochiltree | 3 13 67 | Iss. |
| CI67-1022—Mountain Fuel Supply Co. | North Craig | Colo. | Moffat | 4 19 67 | Iss. |
| Sunray DX Oil Co., Operator, et al.: | | | | | |
| CI63-1286—Valley Gas Transmission, Inc. | Ric-John* | Tex. | Goliad | 4 24 67 | Iss. |
| CI66-651—Natural Gas Pipeline Co. of America. | South Taloga | Okla. | Dewey | 4 24 67 | Iss. |
| CI67-1005—Cities Service Gas Co. | South Wakita* | Okla. | Grant | 4 14 67 | Iss. |
| CI67-1085—Natural Gas Pipeline Co. of America. | Somerset Township. | Okla. | Dewey | 6 6 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Sunset International Petroleum Corp.; | | | | | |
| CI67-1198—El Paso Natural Gas Co. | Langlie Mattix | N. Mex | Lea | 5 19 67 | Iss. |
| CI67-1277—El Paso Natural Gas Co. | Jalmat | N. Mex | Lea | 5 19 67 | Iss. |
| CI67-1278—El Paso Natural Gas Co. | North Skaggs Drinkard. | N. Mex | Lea | 5 19 67 | Iss. |
| CI67-1279—El Paso Natural Gas Co. | North Skaggs Drinkard. | N. Mex | Lea | 5 19 67 | Iss. |
| Sunset International Petroleum Corp., Operator, et al.: | | | | | |
| CI67-1250—Northern Natural Gas Co. | Tubb* | N. Mex | Lea | 5 19 67 | Iss. |
| The Superior Oil Co.: | | | | | |
| CI67-804—Mountain Fuel Supply Co. | West Side Canal | Wyo | Carbon | 2 14 67 | Iss. |
| CI67-1155—Mountain Fuel Supply Co. | North Craig | Colo | Moffat | 4 19 67 | Iss. |
| Edith Swadley, Agent: | | | | | |
| CI67-762—Carnegie Natural Gas Co. | Union District | W. Va | Ritchie | 2 15 67 | Iss. |
| TWM Petroleum, Inc., et al.: | | | | | |
| CI67-1264—Consolidated Gas Supply Corp. | McClellan District | W. Va | Doddridge | 5 19 67 | Iss. |
| T.E.L. Oil & Gas Corp., Operator, et al.: | | | | | |
| CI67-585—Panhandle Eastern Pipe Line Co. | Undesignated | Okla | Texas | 3 29 67 | Iss. |
| Tenneco Oil Co.: | | | | | |
| G-6669—El Paso Natural Gas Co. | Justis | N. Mex | Lea | 4 6 67 | Iss. |
| CI67-189—El Paso Natural Gas Co. | Undesignated | N. Mex | Lea | 2 15 67 | Iss. |
| CI67-714—Cities Service Gas Co. | Waynoka | Okla | Woods | 1 23 67 | Iss. |
| Tesoro Petroleum Corp.: | | | | | |
| CI67-686—Cumberland & Allegheny Gas Co. | Banks | W. Va | Upshur | 1 9 67 | Iss. |
| Texaco Inc.: | | | | | |
| CI67-601—Michigan Wisconsin Pipe Line Co. | Northwest Lovedale. | Okla | Harper | 2 15 67 | Iss. |
| Texas American Oil Corp., Operator, et al.: | | | | | |
| CS67-36—Northern Natural Gas Co. | Ozona Southwest | Tex | Crockett | 3 13 67 | Iss. |
| J. Cleo Thompson: | | | | | |
| CI67-24—United Gas Pipe Line Co. | Willmann | Tex | San Patricio | 1 24 67 | Iss. |
| Tidewater Oil Co.: | | | | | |
| G-17951—Transwestern Pipeline Co. | Undesignated | Okla | Beaver* | 4 14 67 | Iss. |
| CI67-1053—Colorado Interstate Gas Co. | Point of Rocks | Wyo | Sweetwater | 4 19 67 | Iss. |
| CI67-1357—Texas Gas Transmission Corp. | North Bosco | La | Acadia | 5 24 67 | Iss. |
| CI67-1370—Arkansas Louisiana Gas Co. | Undesignated | Okla | Haskell* | 5 24 67 | Iss. |
| Titan Petroleum Corp., Operator, et al.: | | | | | |
| CI67-1326—Natural Gas Pipeline Co. of America. | Camrick | Okla | Beaver | 5 16 67 | Iss. |

See footnotes at end of table, p. 1246.

NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Tonkawa Gas Co.: | | | | | |
| CI67-826—Panhandle Eastern Pipe Line Co. | N.W. Peek | Okla | Ellis | 3 2 67 | Iss. |
| Transamerican Petroleum Corp., et al.: | | | | | |
| CI67-931—Consolidated Gas Supply Corp. | Banks Township | Pa | Indiana | 3 29 67 | Iss. |
| CI67-932—Consolidated Gas Supply Corp. | Gaskill Township | Pa | Jefferson | 3 29 67 | Iss. |
| CI67-933—Consolidated Gas Supply Corp. | Gaskill Township* | Pa | Indiana | 3 29 67 | Iss. |
| CI67-934—Consolidated Gas Supply Corp. | Gaskill Township* | Pa | Indiana | 3 29 67 | Iss. |
| CI67-935—Consolidated Gas Supply Corp. | Bell Township | Pa | Jefferson | 3 29 67 | Iss. |
| CI67-936—Consolidated Gas Supply Corp. | Gaskill* | Pa | Jefferson | 3 29 67 | Iss. |
| Transcon Corp.: | | | | | |
| CI67-694—Northern Natural Gas Gas Co. | West Clear Lake | Okla | Beaver | 1 17 67 | Iss. |
| Harvey G. Travis, Agent: | | | | | |
| CI67-1559—Texas Eastern Transmission Corp. | Hillmann | Tex | Jefferson | 6 29 67 | Iss. |
| Tri-Service Drilling Co. Operator: | | | | | |
| CS67-37—El Paso Natural Gas Co. | Spraberry Trend | Tex | Reagan | 3 13 67 | Iss. |
| Trice Production Co.: | | | | | |
| CI67-706—Panhandle Eastern Pipe Line Co. | Valley Center | Okla | Dewey | 1 17 67 | Iss. |
| French Trimble, et al.: | | | | | |
| CI67-731—Cumberland & Allegheny Gas Co. | Mountain Lake Park. | Md | Garrett | 3 21 67 | Iss. |
| CI67-1061—Consolidated Gas Supply Corp. | Union District | W. Va | Barbour | 4 14 67 | Iss. |
| Trojan Coal & Petroleum Corp., et al.: | | | | | |
| CI67-1164—Consolidated Gas Supply Corp. | Center District | W. Va | Gilmer | 4 19 67 | Iss. |
| Union Oil Company of California: | | | | | |
| CI65-683—Northern Natural Gas Co. | Coyanosa Area | Tex | Pecos | 5 12 67 | Iss. |
| CI67-537—Northern Natural Gas Co. | Coyanosa | Tex | Pecos | 2 15 67 | Iss. |
| CI67-538—Northern Natural Gas Co. | Coyanosa | Tex | Pecos | 2 15 67 | Iss. |
| CI67-560—Panhandle Eastern Pipe Line Co. | Belva "V" | Okla | Wood | 1 9 67 | Iss. |
| CI67-1222—Panhandle Eastern Pipe Line Co. | South Bishop | Okla | Ellis | 4 24 67 | Iss. |
| Union Producing Co., Operator, et al.: | | | | | |
| CI67-713—Southern Natural Gas Co. | King's Ridge | La | Lafourche | 1 17 67 | Iss. |
| Union Texas Petroleum, a Division of Allied Chemical Corp.: | | | | | |
| CI67-651—Arkansas Louisiana Gas Co. | Southwest Lacy | Okla | Kingfisher | 1 9 67 | Iss. |
| CI67-1207—Lone Star Gas Co. | North Durant | Okla | Bryan | 4 24 67 | Iss. |

See footnotes at end of table, p. 1246.

### NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION [1] |
|---|---|---|---|---|---|
| Kenneth B. Valentine: | | | | | |
| CI61-1595—Equitable Gas Co. | Otter District | W. Va. | Clay | 5 16 67 | Iss. |
| CI62-1084—Equitable Gas Co. | Otter District | W. Va. | Clay | 2 15 67 | Iss. |
| Van Grisso Oil Co.: | | | | | |
| CI63-59—Michigan Wisconsin Pipe Line Co. | Undesignated | Okla. | Harper | 5 22 67 | Iss. |
| Ruth M. Vaughan & Warner G. Vaughan: | | | | | |
| CI67-821—El Paso Natural Gas Co. | Basin Dakota | N. Mex. | Rio Arriba | 3 2 67 | Iss. |
| E. C. Ware: | | | | | |
| CI67-440—United Fuel Gas Co. | Undesignated | Ky. | Martin | 12 6 67 | Iss. |
| CI67-441—United Fuel Gas Co. | Kermit | W. Va. | Mingo | 12 6 67 | Iss. |
| CI67-1334—Kentucky-West Virginia Gas Co. | Undesignated | Ky. | Pike | 5 16 67 | Iss. |
| CI67-1335—Kentucky-West Virginia Gas Co. | Undesignated | Ky | Martin | 5 16 67 | Iss. |
| Ralph L. Warner: | | | | | |
| CI67-988—Equitable Gas Co. | Salt Lick District | W. Va. | Braxton | 4 6 67 | Iss. |
| E. C. Wedell, et al.: | | | | | |
| CI67-816—Northern Natural Gas Co. | Undesignated | Kans. | Barton | 2 15 67 | Iss. |
| Henry B. Wehrle, Jr., et al.: | | | | | |
| CI67-783—United Fuel Gas Co. | Stonewall District | W. Va. | Wayne | 3 2 67 | Iss. |
| CI67-799—United Fuel Gas Co. | Union District | W. Va. | Wayne* | 3 2 68 | Iss. |
| Wessely Petroleum, Ltd.: | | | | | |
| CI67-872—Michigan Wisconsin Pipe Line Co. | Mocane-Laverne | Okla. | Harper | 4 19 67 | Iss. |
| CI67-974—Michigan Wisconsin Pipe Line Co. | Mocane-Laverne | Okla. | Harper | 4 19 67 | Iss. |
| Western Oil Fields, Inc., Operator, et al.: | | | | | |
| G-11389—Cities Service Gas Co. | North Whelan | Kans. | Barber | 5 24 67 | Iss. |
| CI61-273—Transwestern Pipeline Co. | Parsell | Tex. | Roberts | 5 24 67 | Iss. |
| Westmore Drilling Company, Inc., Operator, et al.: | | | | | |
| CI67-1045—Cities Service Gas Co. | Nurse Northeast Pool. | Kans. | Barber | 4 5 67 | Iss. |
| Robert L. Wharton: | | | | | |
| CI67-888—Cumberland & Allegheny Gas Co. | Middle Fork District. | W. Va. | Randolph | 3 21 67 | Iss. |
| Roger M. Wheeler: | | | | | |
| CI67-398—Northern Natural Gas Co. | Southeast Farnsworth. | Tex. | Ochiltree | 1 9 67 | Iss. |
| D. E. & R. J. Whelan, Inc.: | | | | | |
| G-6304—Texas Eastern Transmission Corp. | Whelan | Tex. | Harrison | 4 24 67 | Iss. |
| Fred Whitaker, Operator, et al.: | | | | | |
| CI61-902—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Bethany | Tex. | Panola | 3 2 67 | Iss. |
| Robert F. White: | | | | | |
| CI65-301—Panhandle Eastern Pipe Line Co. | Lerado | Kans. | Reno | 5 12 67 | Iss. |
| CI67-1244—Cities Service Gas Co. | Traffas | Kans. | Barber | 5 12 67 | Iss. |
| CI67—1509—Consolidated Gas Supply Corp. | Hugoton | Kans. | Gilmer | 6 27 67 | Iss. |

See footnotes at end of table, p. 1246.

## NEW SERVICE CERTIFICATES—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Sue Trammell Whitfield & W. B. Trammell, Jr.: | | | | | |
| CI67-1103—Natural Gas Pipeline Co. of America. | Old Ocean | Tex | Brazoria* | 4 19 67 | Iss. |
| Wichita Iron & Metals Corp.: | | | | | |
| CI67-113—Panhandle Eastern Pipe Line Co. | Wil | Kans | Edwards | 10 17 67 | Iss. |
| Lester Wilkonson: | | | | | |
| CI67-1235—Northern Natural Gas Co. | Hugoton | Kans | Finney | 5 19 67 | Iss. |
| Alvin Wilson, et al.: | | | | | |
| G-4846—Tennessee Gas Pipeline Co., A Division of Tenneco Inc. | Bethany | Tex | Panola | 4 6 67 | Iss. |
| E. C. Wilson, et al.: | | | | | |
| CI67-726—Carnegie Natural Gas Co. | Glenville | W. Va | Gilmer | 1 23 67 | Iss. |
| CI67-727—Carnegie Natural Gas Co. | Glenville | W. Va | Gilmer | 1 23 67 | Iss. |
| Anne K. Wise: | | | | | |
| CI67—1040—The Manufacturers Light and Heat Co. | Somerset Township | Pa | Washington | 4 5 67 | Iss. |
| Woods Petroleum Corp.: | | | | | |
| CI67-634—Michigan Wisconsin Pipe Line Co. | Laverne | Okla | Harper | 2 15 67 | Iss. |
| CI67-827—Arkansas Louisiana Gas Co. | Booneville | Ark | Logan | 3 2 67 | Iss. |
| CI67-1215—Panhandle Eastern Pipe Line Co. | Southeast Arnett | Okla | Ellis | 4 24 67 | Iss. |
| William R. Wray: | | | | | |
| CS67-29—Hunt Oil Co | Permian Basin | Tex | Upton | 1 24 67 | Rej. |
| Charles B. Wrightsman: | | | | | |
| CI67-1051—Lone Star Gas Co | Undesignated | Okla | Garvin | 4 24 67 | Iss. |
| Marshall R. Young Oil Co.: | | | | | |
| G-3270—United Gas Pipe Line Co. | Bancroft* | La | Beauregard | 10 17 67 | Iss. |
| J. Lee Youngblood: | | | | | |
| G-15298—Colorado Interstate Gas Co. | Keys | Okla | Cimarron | 3 13 67 | Iss. |
| CI63-826—Cities Service Gas Co | Eureka | Okla | Grant | 4 19 67 | Iss. |
| CI63-986—Cities Service Gas Company. | Winchester | Okla | Woods | 4 5 67 | Iss. |
| CI67-1252—Northern Natural Gas Co. | Mocane-Laverne | Okla | Beaver | 5 12 67 | Iss. |
| Yucca Petroleum Co., Operator, et al.: | | | | | |
| CI67-922—Northern Natural Gas Co. | Upper Morrow | Tex | Hansford | 3 21 67 | Iss. |

See footnotes at end of table, p. 1246.

## PRODUCER APPLICATIONS FOR ABANDONMENT OF SERVICE DISPOSED OF DURING THE PERIOD JANUARY 1, 1967 THROUGH JUNE 30, 1967

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION [1] |
|---|---|---|---|---|---|
| A/C Engineering & Operating Co.: | | | | | |
| CI67-1595—Northern Natural Gas Co. | Cruse | Okla | Beaver | 6 29 67 | Iss. |
| Acco Oil & Gas Co., Operator, et al.: | | | | | |
| CI67-672—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | West Indian Hills | Tex | Montgomery | 1 23 67 | Iss. |
| Ashland Oil & Refining Co.: | | | | | |
| CI67-1248—Northern Natural Gas Co. | Harper Ranch | Kans | Clark | 5 12 67 | Iss. |
| Atlantic Richfield Co.: | | | | | |
| CI67-1199—Texas Eastern Transmission Corp. | Willow Springs | Tex | Gregg | 4 24 67 | Iss. |
| W. C. Barnett, Jr., Trustee, et al.: | | | | | |
| CI67-1322—Natural Gas Pipeline Co. of America. | Fairbanks | Tex | Harris | 5 16 67 | Iss. |
| R. E. Beamon: | | | | | |
| CI67-781—Natural Gas Pipeline Co. of America. | Fairbanks Area | Tex | Harris | 2 15 67 | Iss. |
| C. W. Beecher, Agent for Graham Stutler Gas Co.: | | | | | |
| CI67-1150—Cabot Corp | Lee District | W. Va | Calhoun | 4 19 67 | Iss. |
| C. W. & L. W. Beecher, Operator, et al.: | | | | | |
| CI67-1012—Consolidated Gas Supply Corp. | Sheridan District | W. Va | Calhoun | 4 5 67 | Iss. |
| CI67-1041—Coastal States Gas Producing Co., et al. | Johns Field Area | Tex | Duval | 4 5 67 | Iss. |
| Gus Berry: | | | | | |
| CI67-1251—Consolidated Gas Supply Corp. | Murphy District | W. Va | Ritchie | 5 12 67 | Iss. |
| The Bradley Producing Corp.: | | | | | |
| CI67-844—Natural Gas Pipeline Co. of America. | Camerick | Okla | Beaver | 3 2 67 | Iss. |
| Richard H. Brumbaugh, d/b/a Carrie Conley 47 Acre Lea: | | | | | |
| CI67-1011—Consolidated Gas Supply Corp. | Washington District. | W. Va | Calhoun | 4 5 67 | Iss. |
| C. I. West Va. Corp.: | | | | | |
| CI67-1114—Cabot Corp | Reedy District | W. Va | Wirt | 4 19 67 | Iss. |
| CI67-1116—Cabot Corp | Burning Springs District. | W. Va | Wirt | 4 19 67 | Iss. |
| Francis Cain: | | | | | |
| CI67-1135—Cabot Corp | Center District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1136—Cabot Corp | Sherman District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1137—Cabot Corp | Center District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1138—Cabot Corp | Sheridan District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1139—Cabot Corp | Center District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1144—Cabot Corp | Center District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1148—Cabot Corp | Lee District | W. Va | Calhoun | 4 19 67 | Iss. |

See footnotes at end of table, p. 1246.

## ABANDONMENT APPLICATIONS—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| The Camino Corp., formerly Camino Oil Corp.: | | | | | |
| CI67-613—Transcontinental Gas Pipe Line Corp. | Luby | Tex. | Nueces | 5 3 67 | Iss. |
| Morris Cannan, Operator, et al.: | | | | | |
| CI67-1287—Texas Eastern Transmission Corp. | Kittie West | Tex. | Live Oak | 5 19 67 | Iss. |
| Champlin Petroleum Co.: | | | | | |
| CI67-1195—Panhandle Eastern Pipe Line Co. | Lerado | Kans. | Reno* | 4 24 67 | Iss. |
| Harry Allen Chapman, Operator, et al.: | | | | | |
| CI67-1071—Cities Service Gas Co. | Undesignated | Okla. | Kay | 4 14 67 | Iss. |
| Cities Service Oil Co.: | | | | | |
| CI67-1284—Transcontinental Gas Pipe Line Corp. | South Bourg | La. | Terrebonne | 5 19 67 | Iss. |
| Coastal States Gas Producing Co.: | | | | | |
| CI67-858—South Texas Natural Gas Gathering Co. | North Sun | Tex. | Starr | 3 13 67 | Iss. |
| Columbian Fuel Corp.: | | | | | |
| CI67-683—Cumberland & Allegheny Gas Co. | Warren | W. Va. | Upshur | 1 9 67 | Iss. |
| CI67-906—Equitable Gas Co. | Court House District. | W. Va. | Lewis | 4 5 67 | Iss. |
| Consolidated Oil & Gas, Inc., Operator, et al.: | | | | | |
| CI67-796—Arkansas Louisiana Gas Co. | Northwest Webb | Okla. | Kay | 2 14 67 | Iss. |
| Edwin L. Cox: | | | | | |
| CI67-984—Cities Service Gas Co. | Undesignated | Okla. | McClain | 4 6 67 | Iss. |
| Creslenn Oil Co., Inc.: | | | | | |
| CI67-997—Consolidated Gas Supply Corp. | Washington District. | W. Va. | Calhoun | 4 6 67 | Iss. |
| Crystal Oil & Land Co.: | | | | | |
| CI67-1109—Texas Eastern Transmission Corp. | Elm Grove | La. | Bossier | 4 19 67 | Iss. |
| CI67-1259—United Gas Pipe Line Co. | Greenwood-Waskom | La. | Caddo | 5 24 67 | Iss. |
| William K. Davis, Operator, et al.: | | | | | |
| CI67-1000—Texas Eastern Transmission Corp. | Southeast Rhode Ranch. | Tex. | McMullen | 4 19 67 | Iss. |
| J. F. Deem: | | | | | |
| CI67-986—Consolidated Gas Supply Corp. | Troy District | W. Va. | Gilmer | 4 6 67 | Iss. |
| D. W. Farley, et al., d/b/a Sheep Run Oil & Gas Co.: | | | | | |
| CI67-131—Penova Interest | Grant | W. Va. | Ritchie | 1 23 67 | Iss. |
| Paul Fleming, et al., d/b/a Fleming Oil & Gas Co.: | | | | | |
| CI67-1142—Cabot Corp. | Washington District. | W. Va. | Calhoun | 4 19 67 | Iss. |
| Forest Oil Corp.: | | | | | |
| CI67-926—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | South Grand Chenier. | La. | Cameron | 3 21 67 | Iss. |
| Grant Fowler, Agent for S. P. Bell Heirs Tract: | | | | | |
| CI67-1141—Cabot Corp. | Sherman District | W. Va. | Calhoun | 4 19 67 | Iss. |

See footnotes at end of table, p. 1246.

## ABANDONMENT APPLICATIONS—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| I. Dolph Fowler, Agent for Fowler Gas Co.: | | | | | |
| CI67-1124—Cabot Corp | Lee District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1125—Cabot Corp | Sherman District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1126—Cabot Corp | Lee District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1127—Cabot Corp | Sherman District | W. Va | Calhoun | 4 19 67 | Iss. |
| CI67-1128—Cabot Corp | Center District | W. Va | Calhoun | 4 19 67 | Iss. |
| Vernon W. Frost, et al.: | | | | | |
| CI66-1209—Glenn H. McCarthy | Fig Ridge | Tex | Chambers | 2 1 67 | Wtd. |
| D. L. Gainer, d/b/a Gunn-Stevens, et al.: | | | | | |
| CI67-1122—Cabot Corp | Sheridan District | W. Va | Calhoun | 4 19 67 | Iss. |
| Melvin C. Garlow, et al.: | | | | | |
| CI67-1314—Mt. Morris Gas Co | Cass District | W. Va | Monongalia | 5 24 67 | Iss. |
| Global Oils, Inc.: | | | | | |
| CI67-1173—Natural Gas Pipeline Co. of America. | Southeast Woodward. | Okla | Woodward | 4 19 67 | Iss. |
| Grass Run Oil & Gas Co.: | | | | | |
| CI67-1119—Cabot Corp | Undesignated | W. Va | Ritchie | 4 19 67 | Iss. |
| Gulf Oil Corp.: | | | | | |
| CI67-770—Arkansas Louisiana Gas Co. | Haynesville | La | Claiborne | 2 15 67 | Iss. |
| CI67-1032—United Gas Pipe Line Co. | Carthage | Tex | Panola | 4 5 67 | Iss. |
| CI67-1165—Kansas-Nebraska Natural Gas Co., Inc. | Dolis Hill | Wyo | Fremont | 4 19 67 | Iss. |
| P. P. Gunn: | | | | | |
| CI67-980—Consolidated Gas Supply Corp. | Washington District | W. Va | Calhoun | 4 5 67 | Iss. |
| CI67-1147—Cabot Corp | Lee District | W. Va | Calhoun | 4 19 67 | Iss. |
| H & H Oil & Gas Co.: | | | | | |
| CI67-1120—Cabot Corp | Washington District | W. Va | Calhoun | 4 19 67 | Iss. |
| Michel T. Halbouty, Operator, et al.: | | | | | |
| CI67-457—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Eagle Lake | Tex | Colorado | 1 9 67 | Iss. |
| Hamilton Brothers, Ltd.: | | | | | |
| CI67-1359—Transwestern Pipeline Co. | North Hansford | Tex | Hansford | 5 24 67 | Iss. |
| Hays & Co., Agent.: | | | | | |
| CI67-996—Consolidated Gas Supply Corps | Central District | W. Va | Doddridge | 4 6 67 | Iss. |
| W. H. Hildreth, et al., d/b/a Orma Oil & Gas Co.: | | | | | |
| CI67-1010—Consolidated Gas Supply Corp. | Washington District | W. Va | Calhoun | 4 5 67 | Iss. |
| J. E. Hillier: | | | | | |
| CI67-769—Valley Gas Transmission, Inc. | Maetze | Tex | Goliad | 2 15 67 | Iss. |
| Estate of L. C. Hoffman: | | | | | |
| CI67-1249—Southern Natural Gas Co. | Logansport | La | De Soto | 5 24 67 | Iss. |
| Robert L. Holland & Justin M. Henderson, Agents.: | | | | | |
| CI67-987—Consolidated Gas Supply Corp. | New Melton District. | W. Va | Doddridge | 4 6 67 | Iss. |

See footnotes at end of table, p. 1246.

## ABANDONMENT APPLICATIONS—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| L. B. Horn, Operator, et al.: | | | | | |
| CI67-859—Coastal States Gas Producing Co.* | A & H | Tex | Duval | 3 13 67 | Iss. |
| Houston Natural Gas Production Co.: | | | | | |
| CI67-576—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Morgan | Tex | San Patricio | 1 9 67 | Iss. |
| CI67-817—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Coastal | Tex | Starr | 3 2 67 | Iss. |
| Humble Oil & Refining Co.: | | | | | |
| CI67-843—Natural Gas Pipeline Co. of America. | S. E. Camerick | Okla | Beaver | 3 2 67 | Iss. |
| CI67-902—Sinclair Oil & Gas Co. | Concho | Tex | Tom Green | 3 29 67 | Iss. |
| CI67-1100—El Paso Natural Gas Co. | South Four Lakes | N. Mex | Lea | 5 12 67 | Iss. |
| CI67-1236—Texas Eastern Transmission Corp. | Rhode Ranch | Tex | McMullen | 5 12 67 | Iss. |
| Edwin M. Jones Oil Co., et al.: | | | | | |
| CI67-484—United Gas Pipe Line Co. | North Hondo | Tex | Karnes | 1 9 67 | Iss. |
| Kidd Oil & Gas Co.: | | | | | |
| CI67-1112—Cabot Corp | Undesignated | W. Va | Calhoun | 4 19 67 | Iss. |
| Philip Lemon, Agent for Franz Nickolich, et al.: | | | | | |
| CI67-1140—Cabot Corp | Murphy District | W. Va | Ritchie | 4 19 67 | Iss. |
| S. A. Lewis, Agent: | | | | | |
| CI67-1380—The Manufacturers Light and Heat Co. | Amwell Township | Pa | Washington | 5 1 67 | Rej. |
| John P. Lowe, Jr., et al.: | | | | | |
| CI67-810—Shell Oil Co | Mustang Creek | Tex | Colorado | 2 15 67 | Iss. |
| Lyons Petroleum, et al.: | | | | | |
| CI67-982—Texas Eastern Transmission Corp. | South Hallsville | Tex | Harrison | 4 6 67 | Iss. |
| McCarrick, Gouger & Mitchell, Operator, et al.: | | | | | |
| CI67-923—Valley Gas Transmission, Inc. | Fort Merrill | Tex | Live Oak | 3 21 67 | Iss. |
| William E. McCommons: | | | | | |
| CI67-775—United Gas Pipe Line Co. | Baxterville | Miss | Lamar | 2 15 67 | Iss. |
| George C. McGhee, Operator, et al.: | | | | | |
| CI67-1050—Texas Gas Transmission Corp. | South Bayou Mallett. | La | Acadia | 4 5 67 | Iss. |
| Clarence Maze: | | | | | |
| CI67-1149—Cabot Corp | Sherman District | W. Va | Calhoun | 4 19 67 | Iss. |
| George B. Mertz: | | | | | |
| CI67-661—Equitable Gas Co | Undesignated | W. Va | Lewis | 1 9 67 | Iss. |
| Midwest Oil Corp., Operator, et al.: | | | | | |
| CI67-682—United Fuel Gas Co | Branch | La | Acadia | 1 17 67 | Iss. |
| CI67-1274—Penova Interests | Laurel Runs* | W. Va | Ritchie | 5 19 67 | Iss. |
| Bob Miner, Operator, et al.: | | | | | |
| CI67-849—United Gas Pipe Line Co. | Bloomington | Tex | Victoria | 3 2 67 | Iss. |
| George Mitchell & Associates, Inc., Agent: | | | | | |
| CI67-1201—Texas Eastern Transmission Corp. | Buttermilk (Slough). | Tex | Matagorda | 4 24 67 | Iss. |

See footnotes at end of table, p. 1246.

## ABANDONMENT APPLICATIONS—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION |
|---|---|---|---|---|---|
| Mobil Oil Corp.: | | | | | |
| CI67-927—Valley Gas Transmission, Inc. | Southwest Pheasant. | Tex. | Matagorda | 3 29 67 | Iss. |
| Robert Mosbacher: | | | | | |
| CI67-900—Texas Eastern Transmission Corp. | Aldine | Tex. | Harris | 3 21 67 | Iss. |
| CI67-901—Texas Eastern Transmission Corp. | Collier Pearl | Tex. | Bee | 3 21 67 | Iss. |
| CI67-1191—Texas Eastern Transmission Corp. | East Peohler | Tex. | Goliad | 4 24 67 | Iss. |
| CI67-1192—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Englehart | Tex. | Colorado | 4 24 67 | Iss. |
| CI67-1232—Arkansas Louisiana Gas Co. | South Hallsville | Tex. | Harrison | 5 12 67 | Iss. |
| W. H. Mosser, et al., d/b/a Weston Oil & Gas Co.: | | | | | |
| CI67-1013—Consolidated Gas Supply Corp. | Hackers Creek District. | W. Va. | Lewis | 4 5 67 | Iss. |
| J. H. Nagner, Operator, et al.: | | | | | |
| CI67-738—Wunderlich Development Co. | Undesignated | Kans. | Cowley | 1 23 67 | Iss. |
| CI67-739—Wunderlich Development Co. | Undesignated | Kans. | Cowley | 1 23 67 | Iss. |
| CI67-740—Wunderlich Development Co. | Undesignated | Kans. | Cowley | 1 23 67 | Iss. |
| CI67-741—Wunderlich Development Co. | Undesignated | Kans. | Cowley | 1 23 67 | Iss. |
| Holly Nester, Agent: | | | | | |
| CI67-1115—Cabot Corp. | Center District | W. Va. | Calhoun | 4 19 67 | Iss. |
| New Mexico Western Oil & Gas Co.: | | | | | |
| CI62-1390—El Paso Natural Gas Co. | Ballard (Pictured Cliffs). | N. Mex. | San Juan* | 4 14 67 | Iss. |
| Northern Pump Co., Operator, et al.: | | | | | |
| CI67-1336—Texas Eastern Transmission Corp. | West Cosden | Tex. | Bee | 5 16 67 | Iss. |
| CI67-1337—Texas Eastern Transmission Corp. | West Cosden | Tex. | Bee | 5 16 67 | Iss. |
| Oil Industries Associates, et al.: | | | | | |
| CI67-791—Consolidated Gas Supply Corp. | Undesignated | W. Va. | Undesignated | 1 17 67 | Rej. |
| Okmar Oil Co.: | | | | | |
| CI67-1113—Cabot Corp. | Undesignated | W. Va. | Calhoun | 4 19 67 | Iss. |
| Orion Oil Co., Operator, et al.: | | | | | |
| CI67-1007—Transcontinental Gas Pipe Line Corp. | South Longhorn | Tex. | Duval | 4 5 67 | Iss. |
| Pan American Petroleum Corp.: | | | | | |
| G-10799—El Paso Natural Gas Co. | Undesignated | N. Mex. | Undesignated | 1 17 67 | Wtd. |
| CI67-1033—Mountain Fuel Supply Co. | Little Worm Creek | Wyo. | Sweetwater | 4 14 67 | Iss. |
| CI67-1175—Texas Eastern Transmission Corp. | West Puerto Bay | Tex. | San Patricio | 4 19 67 | Iss. |
| CI67-1270—Texas Eastern Transmission Corp. | East Muldon | Miss. | Monroe | 5 19 67 | Iss. |
| CI67-1288—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Witte | Tex. | Victoria | 5 19 67 | Iss. |

See footnotes at end of table, p. 1246.

## ABANDONMENT APPLICATIONS—Continued

| PRODUCER# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Pauley Petroleum Inc.: | | | | | |
| CI67-819—Texas Eastern Transmission Corp. | Poehler | Tex. | Goliad | 3 2 67 | Iss. |
| Petroleum Promotions, Inc., et al.: | | | | | |
| CI67-949—Consolidated Gas Supply Corp. | Court House District. | W. Va. | Lewis | 3 29 67 | Iss. |
| Philadelphia Oil Co.: | | | | | |
| CI67-1257—Equitable Gas Co. | Troy District | W. Va. | Gilmer | 5 12 67 | Iss. |
| Phillips Petroleum Co.: | | | | | |
| CI67-1269—El Paso Natural Gas Co. | South Four Lakes | N. Mex. | Lea | 5 19 67 | Iss. |
| Piney Point Petroleums, Operator, et al.: | | | | | |
| CI67-1008—United Gas Pipe Line Co. | N. W. Corpus | Tex. | Nueces | 4 5 67 | Iss. |
| C. O. Poling, et al., d/b/a Smith & Poling Gas Co.: | | | | | |
| CI67-1129—Cabot Corp. | Center District | W. Va. | Calhoun | 4 19 67 | Iss. |
| CI67-1130—Cabot Corp. | Lee District | W. Va. | Calhoun | 4 19 67 | Iss. |
| CI67-1131—Cabot Corp. | Sheridan District | W. Va. | Calhoun | 4 19 67 | Iss. |
| CI67-1134—Cabot Corp. | Burning Springs District. | W. Va. | Wirt | 4 19 67 | Iss. |
| Rosenthal, Cook & Green, et al.: | | | | | |
| CI67-1035—Transcontinental Gas Pipe Line Corp. | South Tilden | Tex. | McMullen | 4 5 67 | Iss. |
| Shell Oil Co.: | | | | | |
| CI67-1093—United Fuel Gas Co. | Deep Lake | La. | Cameron | 4 14 67 | Iss. |
| Jay Simmons, et al.: | | | | | |
| CI67-847—Coastal States Gas Producing Co. | Harry | Tex. | Webb* | 3 2 67 | Iss. |
| Skelly Oil Co.: | | | | | |
| CI67-1283—Cities Service Gas Co. | Hugoton | Kans. | Finney | 5 19 67 | Iss. |
| CI67-1285—Natural Gas Pipeline Co. of America. | Camrick | Okla. | Beaver | 5 19 67 | Iss. |
| Sam Sklar, et al.: | | | | | |
| CI67-708—United Gas Pipe Line Co. | Rodessa | Tex. | Cass | 2 14 67 | Iss. |
| Smith & Barker Oil & Gas Co., Inc.: | | | | | |
| CI67-1151—Cabot Corp. | Lee District | W. Va. | Calhoun | 4 19 67 | Iss. |
| O.D. Smith Gas Co.: | | | | | |
| CI67-1145—Cabot Corp. | Undesignated | W. Va. | Calhoun | 4 19 67 | Iss. |
| CI67-1146—Cabot Corp. | Undesignated | W. Va. | Wirt* | 4 19 67 | Iss. |
| Walter E. Smith, et al.: | | | | | |
| CI67-1121—Cabot Corp. | Sherman District | W. Va. | Calhoun | 4 19 67 | Iss. |
| CI67-1123—Cabot Corp. | Sherman District | W. Va. | Calhoun | 4 19 67 | Iss. |
| Southeastern Gas Co.: | | | | | |
| CI67-1110—Cabot Corp. | Undesignated | W. Va. | Calhoun | 4 19 67 | Iss. |
| CI67-1111—Cabot Corp. | Undesignated | W. Va. | Calhoun | 4 19 67 | Iss. |
| Southwest Gas Producing Co., Operator, et al.: | | | | | |
| CI67-162—Tensas Gas Gathering Corp. | Rodney | Miss. | Jefferson | 1 9 67 | Iss. |
| Star Gas Co.: | | | | | |
| CI67-1143—Cabot Corp. | Sherman | W. Va. | Calhoun | 4 19 67 | Iss. |
| Sterling Natural Gas Corp., Operator, et al.: | | | | | |
| CI67-943—Texas Eastern Transmission Corp. | Monroe Gas | La. | Ouachita | 3 29 67 | Iss. |

See footnotes at end of table, p. 1246.

## ABANDONMENT APPLICATIONS—Continued

| PRODUCER,# DOCKET NO. AND PURCHASER# | FIELD | STATE | COUNTY | DISPOSITION DATE | DISPOSITION[1] |
|---|---|---|---|---|---|
| Sun Oil Co., Southwest Division: | | | | | |
| CI67-502—Tennessee Gas Pipeline Co., a Division of Tenneco Inc. | Fitzsimmons* | Tex. | Jim Wells* | 12 20 67 | Iss. |
| Sunray DX Oil Co.: | | | | | |
| CI67-666—Grand Valley Transmission Co. | Diamond Ridge | Utah | Grant | 1 9 67 | Iss. |
| The Superior Oil Co.: | | | | | |
| CI67-85—Lone Star Gas Co. | Undesignated | Okla. | Garvin | 4 5 67 | Iss. |
| CI67-86—Lone Star Gas Co. | Undesignated | Okla. | Garvin | 4 5 67 | Iss. |
| CI67-87—Lone Star Gas Co. | Undesignated | Okla. | Garvin | 4 5 67 | Iss. |
| CI67-88—Lone Star Gas Co. | Undesignated | Okla. | Garvin | 4 5 67 | Iss. |
| Tenneco Oil Co., Operator, et al.: | | | | | |
| CI67-715—Lone Star Gas Co. | Doyle | Okla. | Stephens | 1 17 67 | Iss. |
| Texam Oil Corp.: | | | | | |
| CI67-999—Transcontinental Gas Pipe Line Corp. | Tynan | Tex. | Bee | 4 5 67 | Iss. |
| Texas Oil & Gas Corp.: | | | | | |
| CI67-1178—Texas Eastern Transmission Corp. | Garwood | Tex. | Colorado | 4 19 67 | Iss. |
| Tidewater Oil Co.: | | | | | |
| CI67-1162—Texas Eastern Transmission Corp. | Chalk Hill | Tex. | Rusk | 4 19 67 | Iss. |
| CI67-1323—Transcontinental Gas Pipe Line Corp. | South Bourg | La. | Terrebonne | 5 16 67 | Iss. |
| McKinley Trent, Trustee: | | | | | |
| CI67-806—United Fuel Gas Co. | Kermit | W. Va. | Mingo | 2 14 67 | Iss. |
| Trigood Oil Co.: | | | | | |
| CI67-1025—Colorado-Wyoming Co. | Berthoud | Colo. | Larimer | 4 19 67 | Iss. |
| Tuscarora Oil & Gas Corp.: | | | | | |
| CI67-998—Consolidated Gas Supply Corp. | Troy District | W. Va. | Gilmer | 4 6 67 | Iss. |
| Rip C. Underwood: | | | | | |
| CI67-905—Colorado Interstate Gas Co. | Keyes Dome | Okla. | Texas* | 5 19 67 | Iss. |
| Dean Wells, et al.: | | | | | |
| CI67-959—Panhandle Eastern Pipe Line Co. | Undesignated | Kans. | Edwards | 4 24 67 | Iss. |
| West Union Oil & Gas Co.: | | | | | |
| CI67-798—Consolidated Gas Supply Corp. | West Union District. | W. Va. | Doddridge | 3 2 67 | Iss. |

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* Indicates that other fields, counties or States are also included.

# Producers' and Purchasers' may include et al., trustee, agent, or additional names on certain dockets.

[1] Iss., issued; Rej., rejected; Wtd., withdrawn.